THE

FRENCH CIVIL CODE,

REVISED EDITION.

HENRY CACHARD.

N.Y.T. 12/28/41

150.—

HENRY CACHARD

Wireless to THE NEW YORK TIMES.

VICHY, Dec. 27—The death is reported from Paris of Henry Cachard, for many years a lawyer and prominent member of the American colony. He and his brother, Edward, did much entertaining, especially in the days before the first World War. Henry, who married Yvonne de Cazanove, belonged to many Paris clubs.

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Paris Sept 1931.

THE FRENCH CIVIL CODE.

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FRENCH CIVIL CODE,

REVISED EDITION.

BY

HENRY CACHARD, B.A.,

COUNSELLOR AT LAW OF THE NEW YORK BAR,
COMMANDER OF THE LEGION OF HONOR.

DR. NORMAN A. WIGGINS

PARIS :
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PREFACE.

Preface of Mr. Raymond Poincaré former President of the French Republic

Mr. Henry Cachard a Counsellor at Law of the Supreme Court of the State of New York and of the Federal Courts of the United States had, as early as 1895, the happy idea of publishing an English translation of the French Civil Code. His book was then presented to the readers of two worlds by Baron de Courcel former French Ambassador to London and by Lord Russell who had been Chief Justice of England. Both of them had praised, as they deserved, the conscientious care and the remarkable efficiency with which the English version had been composed.

Mr. Henry Cachard, who is a Licentiate at Law of the Law Faculty of Paris, and who is very familiar with both languages, possessed all the necessary qualifications to achieve marked success in this delicate undertaking. It is

Préface de M. Raymond Poincaré ancien Président de la République Française

Mr. Henry Cachard, avocat inscrit à la Cour Suprême de l'Etat de New-York et aux Cours Fédérales des Etats-Unis, a eu, dès 1895, l'heureuse idée de publier une traduction anglaise du Code Civil Français. Son travail a été présenté alors aux lecteurs des deux mondes par le Baron de Courcel, ancien Ambassadeur de France à Londres et par Lord Russell, qui avait été "Chief Justice" d'Angleterre. Ils avaient fait l'un et l'autre un éloge mérité du soin consciencieux et de la remarquable compétence avec lesquels avait été établi le texte anglais.

Mr. Henry Cachard, licencié en droit de la Faculté de Paris, très familier avec les deux langues, avait toutes les qualités nécessaires pour réussir admirablement dans cette délicate entreprise.

Ce n'est jamais sans grands risques qu'on se hasarde à faire passer du français en

never without great risk that one attempts to transpose from French into English, or vice versa a book of some importance. The style of the two languages is so different that there is always a danger of betraying one or the other. Still more difficult and doubtful is the result, when one is confronted with a language as concise and compact as that of the Civil Code, where Stendhal loved to find the standard and model of French style. However Mr. Henry Cachard did accomplish this perilous feat with perfect ease. Thirty-five years have passed since his book was published, and the volume would certainly not have aged, if during that long interval the traditional aspect of the Civil Code had not been greatly modified.

When this vast law compendium appeared at the dawn of the XIXTH century, owing to the vigorous and impulsive force of Bonaparte, France realized a methodical effort of coordination which humanity had not ventured to attempt since the Digest and the Institutes. (1) Stimulated by the example which came from Paris, a number of nations tried successively and

(1) They appeared in the year 533.

anglais, ou réciproquement, un ouvrage de quelque importance. Le génie des deux langues est si différent qu'on s'expose toujours à trahir l'une ou l'autre. Beaucoup plus difficile encore et plus douteux est le succès lorsqu'on s'attaque à une rédaction aussi concise et aussi ramassée que celle de ce Code Civil où Stendhal aimait à voir le type et le modèle du style Français.

Mr. Henry Cachard a cependant accompli avec une aisance parfaite ce redoutable tour de force. Trente-cinq ans ont passé sur son livre et le volume n'aurait certainement pas vieilli si, dans ce long intervalle de temps, la physionomie traditionnelle du Code Civil ne s'était elle-même sensiblement modifiée.

Lorsque ce vaste recueil juridique a paru à l'aurore du XIX[e] siècle, sous la vigoureuse impulsion de Bonaparte, la France a réalisé un effort de méthode et d'ordonnance que l'humanité n'avait plus osé tenter depuis le Digeste et les Institutes. (1) Stimulées par l'exemple venu de Paris, nombre de nations se sont successivement livrées, avec plus ou moins de bonheur, à des besognes analogues de compila-

(1) Ils ont paru en l'an 533.

more or less happily, to undertake similar rational compilations. But, of course, the publication of national Codes did not anywhere exhaust the thriftiness of legislative bodies. In all countries where representative Governments or Parliaments exist, the laws have been remodelled again and again, repealed, modified, completed or amended.

In most cases the French law-maker was careful to include the new enactments in the frame work of the old Code. But sometimes also and specially in recent years, laws have been passed which contain implicit or indirect changes and of which the length does not permit that they should be embodied in full in the series of the former articles. This has brought about additions, amplifications and grafting which embarrass and obscure the mind of the reader.

Mr. Henry Cachard has very ingeniously met these difficulties. Whenever it was possible, he has inserted under the numbers of the original articles, the subsequent laws with their respective dates, as French editors usually do. When it was necessary, he has interpolated in special chapters the full wording of the new laws which were not susceptible rationnelle. Mais bien entendu la publication des Codes nationaux n'a nulle part épuisé la fécondité législative. Dans tous les pays où fonctionne un régime représentatif ou parlementaire, les lois ont été cent fois remises sur le chantier, abrogées, remplacées, complétées, ou amendées.

Le plus souvent, le législateur français a pris soin de faire entrer les dispositions nouvelles dans le cadre du vieux Code. Mais quelquefois aussi, et surtout en ces dernières années, des textes ont été votés qui comportent des modifications implicites ou indirectes, et dont la longueur ne permet pas l'introduction totale dans la suite des articles anciens. De là des additions, des superpositions, des greffes, qui encombrent et déroutent l'esprit du lecteur.

Mr. Henry Cachard a très ingénieusement paré à ces inconvénients. Chaque fois qu'il a été possible, il a inséré sous les numéros des articles primitifs les lois postérieures avec leurs dates respectives, comme le font, en général, les éditeurs français. Lorsqu'il l'a fallu, il a intercalé dans des chapitres spéciaux l'ensemble des nouvelles dispositions législatives qui ne se prêtaient pas à une incorporation plus étroite. Il a d'autre part, si-

ible of being cited more summarily. Moreover he has indicated in italics, the parts which have been repealed. In a word, he has introduced as much order and clearness as depended upon him, in translating a publication of which the leaves have been encumbered by the innumerable corrections of several generations of law-makers.

Let us hope that the French legislative bodies will some day, in the near future, undertake to classify adapt and remodel the Civil Code of the Republic, which will simplify the future editions of Mr. Henry Cachard and which will also be more convenient for the readers of the original version.

Until this problematical wish can be carried out, the present publication will be of great use to all who are more familiar with English than with French. At a time when science has shortened all distances, when governments and peoples entertain closer relations, when the League of Nations and the Court of the Hague offer them constant opportunities of meeting each other, when legal controversies and arbitration supersede the use of force, a clear and faithful translation of the French

gnalé par une impression en italiques, les passages abrogés. Bref, il a introduit autant d'ordre et de clarté qu'il dépendait de lui d'en mettre dans la traduction du recueil dont la plupart des feuilets ont été chargés de corrections innombrables par plusieurs générations de législateurs.

Espérons que les Chambres Françaises feront, un jour prochain, pour le Code Civil de la République un travail de classement, d'adaptation et de mise au point qui facilitera les futures éditions de M. Henry Cachard et qui ne sera pas sans profit même pour les lecteurs du texte original.

En attendant la réalisation encore problématique de ce vœu, la publication actuelle sera d'une grande utilité pour toutes les personnes qui se servent plus volontiers de l'anglais que du français.

En un temps où la science a raccourci toutes les distances, où les gouvernements et les peuples ont entre eux des relations de plus en plus fréquentes, où la Société des Nations et la Cour de la Haye leur offrent des occasions répétées de rencontre, où des débats juridiques et des décisions arbitrales se substituent peu à peu à l'emploi de la force, une traduction claire et fidèle du

Civil Code can render invaluable services to diplomats, jurists, and political men of all countries. Mr. Henry Cachard was therefor happily inspired in rejuvenating his book, and we cannot too strongly congratulate him for his faith in the cause of progress and peace.

Raymond POINCARÉ.

Code Civil Français peut rendre d'inappréciables services aux diplomates, aux jurisconsultes et aux hommes politiques de tous pays. M. Henry Cachard a donc été bien inspiré en rajeunissant son livre et nous ne saurions trop le féliciter pour cet acte de foi dans le progrès et dans la paix.

Raymond POINCARÉ.

TABLE OF CONTENTS.

PRELIMINARY TITLE

Of the Publication, Effects and Application of Laws in General 1

BOOK I.

OF PERSONS.

Title I.—Of the Enjoyment and Loss of Civil Rights 3
Title II. — Of Records of Civil Status 27
Title III, — Of Domicile 55
Title IV. — Of Absentees 57
Title V. — Of Marriage 65
Title VI. — Of Divorce 86
Title VII. — Of Paternity and Filiation 112
Title VIII. — Of Adoption 122
Title IX. — Of Paternal Authority 129
Title X. — Of Minority, Guardianship and Emancipation 133
Title XI. — Of Majority, Interdiction and Judicial Adviser 160

BOOK II.

OF PROPERTY AND OF DIFFERENT KINDS OF OWNERSHIP.

Title I. — Of Different Kinds of Property .. 167
Title II. — Of Ownership 174
Title III. — Of Usufruct, Use and Habitation 183
Title IV. — Of Servitudes or Land Burdens .. 196

BOOK III.

OF THE DIFFERENT WAYS OF ACQUIRING PROPERTY.

TITLE I. — OF SUCCESSIONS 216
TITLE II. — OF DONATIONS INTER VIVOS AND OF WILLS 258
TITLE III. — OF CONTRACTS OR CONVENTIONAL OBLIGATIONS IN GENERAL 313
TITLE IV. — OF AGREEMENTS WHICH ARE FORMED WITHOUT CONTRACT 377
TITLE V. — OF MARRIAGE CONTRACTS AND OF THE RESPECTIVE RIGHTS OF HUSBAND AND WIFE 381
TITLE VI. — OF SALES 437
TITLE VII. — OF EXCHANGES 461
TITLE VIII. — OF CONTRACTS OF LETTING 462
TITLE IX. — OF CONTRACTS OF PARTNERSHIP ... 489
TITLE X. — OF LOANS. 500
TITLE XI. — OF DEPOSITS AND OF SEQUESTRATION 507
TITLE XII. — OF CONTINGENT CONTRACTS 517
TITLE XIII. — OF POWERS OF ATTORNEY..... 521
TITLE XIV. — OF SECURITY 527
TITLE XV. — OF COMPROMISES 536
TITLE XVI. — OF EXECUTION AGAINST THE PERSON IN CIVIL MATTERS 539
TITLE XVII. — OF PLEDGES 542
TITLE XVIII.—OF PREFERENCES AND MORTGAGES 547
TITLE XIX. — OF COMPULSORY EJECTMENT AND OF RANK AMONG CREDITORS 587
TITLE XX. — OF PRESCRIPTION 591

FRENCH CIVIL CODE

Preliminary Title.

Of the Publication, Effects And Application Of Laws In General.

(Passed March 5, 1803; promulgated 15th of same month.)

Art. 1. Laws become enforceable throughout the whole French territory by virtue of the promulgation made by the King, (*the President of the Republic*).

They shall be enforced in every part of the Kingdom, (*of the Republic*) from the moment the promulgation can have been known.

The promulgation made by the King, (*the President of the Republic*) shall be presumed to be known in the department (*a*) of the Royal residence (*in the department of the seat of the Government*) one day after the day of promulgation, and, in every other department, after the expiration of the same time, increased by as many days as there are ten myriametres, (about twenty ancient leagues) between the city where the promulgation has been made and the chief city of each department.

(*a*) France is divided into 90 Departments.

Art. 2. A law can only enact for the future: it has no retroactive effect. Civ. C. 691, 1179, 2281.

Art. 3. Laws of police and public security are binding upon all those who live on the territory.

Real estate, even when owned by aliens, is governed by French law.

Laws relating to the status and capacity of persons apply to French citizens, even residing in a foreign country. Civ. C. 11, 47, 170, 171, 999, 2063, 2123, 2128.

Art. 4. A Judge who refuses to decide a case, on the pretext that the law is silent, obscure or insufficient, may be prosecuted as being guilty of a denial of justice.

Art. 5. Judges are not allowed to decide cases submitted to them, by way of general and set decisions. Civ. C. 1351.

Art. 6. Laws relating to public order and morals cannot be derogated from by private agreement. Civ. C. 307, 686, 791, 900, 946, 1130, 1133, 1172, 1387, 1443, 1451, 1660, 1674, 1965, 2220.

BOOK FIRST.

OF PERSONS

TITLE FIRST.

OF THE ENJOYMENT AND LOSS OF CIVIL RIGHTS.

(Passed March 8, 1803; promulgated 18th of same month.)

CHAPTER I.

OF THE ENJOYMENT OF CIVIL RIGHTS.

Art. 7. (Law of June 26th 1889). The enjoyment of civil rights is independent of the enjoyment of political rights, which are acquired and retained according to the constitutional and electoral laws.

Art. 8. (Law of June 26th 1889). Every Frenchman shall enjoy civil rights.

(Repealed by Law of August 10, 1927), [*see p.* 11.] *Are French.*

1° *Every individual born of a Frenchman, in France or a foreign country.*

The natural child whose filiation is established during his minority, by acknowledgment or by judgment, follows the nationality of the parent in connection with whom the proof has first been made.

If such filiation is established by the same instrument or judgment as regards the father or mother, the child follows the nationality of the father.

2° *Every individual born in France of unknown parents or of parents whose nationality is unknown.*

3° (*Law of July 22nd*, 1893). *Every individual born in France of foreign parents of whom one was born there; but subject to the privilege for such individual, if the mother is the one who was born in France, to disclaim French nationality, during the year following his coming of age, by complying with the provisions of paragraph* 4 *hereinafter.*

The natural child may, under the same conditions as a legitimate child, disclaim French nationality, when the parent who was born in France is not the one whose nationality the child should follow, according to paragraph 1 *of subdivision* 2.

4° *Every individual born in France of an alien and who, at the time of his majority, is domiciled in France, unless he has disclaimed French nationality, during the year following his majority, such as it is regulated by French law, and proved that he has retained the nationality of his parents, by an attestation in due form of his Government, which shall remain annexed to the declaration, and unless he has also produced, if there is occasion therefor, a certificate establishing that he has answered the call to the colors, according to the military law of his country, except in the cases provided for by treaties.*

5° *Naturalized aliens :*

May be naturalized;

1° *Aliens having obtained leave to establish their domicile in France, in conformity with article* 13

hereinafter, after having been domiciled in France for three years dating from the recording of their application, at the Department of Justice.

2° *Aliens who can prove an uninterrupted residence during ten years.*

A sojourn in a foreign country to fulfil the duties of an office conferred by the French Government counts as a residence in France.

3° *Aliens authorized to establish their domicile in France, after one year, if they have rendered important services to France, if they have displayed remarkable talents, or if they have introduced a new industry or useful inventions, or if they have created industrial or other establishments, or agricultural enterprises, or if they have been connected, in some capacity, with the military service in the colonies and countries under French protectorate.*

4° *An alien who has married a Frenchwoman, also after an authorized domicile of one year.*

An application for naturalization is acted upon by a decree, (a) *after an investigation as to the morality of the alien.*

Art. 9 (Repealed by Law of August 10, 1927) [*see p.* 11.] *Every individual born in France of an alien and who is not domiciled there, at the time of his majority, may, up to the full age of twenty-two years, undertake to establish his domicile in France, and if he establishes it, within a year from taking the engagement, he may claim French nationality by a declaration which, unless recorded at the Department of Justice, shall be void.*

The recording shall be refused, if it appears by the

(*a*) *An act emanating from the Executive.*

papers produced that the applicant does not come within the conditions required by law: but he may then proceed before the Civil Courts, in the manner prescribed by articles 855 *and the following of the Code of Civil Procedure.*

A notice of refusal in which the reasons are stated must be given to the applicant within two months from his declaration.

The recording may also be refused to an applicant fulfilling all legal conditions, on account of his unworthiness; but in that case a decree shall be given, in accordance with the decision of the Council of State, within three months from the declaration, or in case of dispute, from the day upon which the judgment admitting the application has become final, the applicant having been duly notified.

The applicant shall have the right to produce documents and briefs before the Council of State.

In default of the notices above referred to, within the time above specified and at their expiration, the Minister of Justice shall deliver to the applicant, at his request, a copy of his declaration bearing the statement that it has been recorded.

The declaration produces its effects from the day upon which it was made, subject to the annulment which may result from the refusal to record.

The rules relating to the recording, which are prescribed by paragraphs 2 *and* 3 *of the present article shall apply to the declarations made for the purpose of declining French nationality, in accordance with article* 8 *subdivisions* 3 *and* 4 *and articles* 12 *and* 18.

The declarations made either to claim or decline French nationality shall be inserted in the Law

Bulletin, *after having been recorded. Nevertheless the omission of this formality shall not affect the rights of the applicants.*

If the individual claiming French nationality is under the full age of twenty-one years, the declaration shall be made in his name by his father; in case of the latter's death by the mother; in case of death of the father and mother, or of their exclusion from the guardianship, or in the cases provided for by articles 141, 142 *and* 143 *of the Civil Code, by the guardian duly authorized by decision of the family council.*

He also becomes French if having been placed on the schedules of the census, he submits to the formalities of recruitment, without setting up his alienage.

Art. 10. (Repealed by Law of August 10, 1927) [*see p.* 11.] *Every individual born in France or abroad of parents of whom one has lost his or her French nationality, may claim such nationality at any age, under the conditions laid down in article* 9, *unless being domiciled in France and called to the colors, upon his coming of age, he has claimed a foreign nationality.*

Art. 11. An alien shall enjoy in France the same civil rights as those granted to French people, by the treaties with the nation to which such alien belongs. Civ. C. 14, 726, 912, 2123, 2128.

Art. 12. (Repealed by law of August 10, 1927) [*see p.* 11.] *A woman who is an alien and who has married a Frenchman follows the nationality of her husband.*

A woman married to an alien who becomes French

by naturalization, and the children of full age of a naturalized alien, may become French, if they apply therefor, without any obligation of residence, either by a decree conferring such nationality upon the husband, or the father, or the mother, or in consequence of a declaration made by them, in accordance with the terms and under the conditions set forth in article 9.

The minor children of a surviving father or mother who are naturalized, become French, unless, during the year following their majority, they decline such nationality, in accordance with the provisions of article 8 *section* 4.

Art. 13. (Repealed by law of August 10, 1927) [*see p.* 11.] *An alien who has been authorized by decree to establish his domicile in France, shall enjoy all civil rights.*

The effect of the authorization shall expire at the end of five years, if the alien does not ask to be naturalized, or if his application is rejected.

In case of his death before naturalization, the authorization and the period of residence which have followed shall count for the wife and children who were minors at the time of the decree granting such authorization.

Art. 14. An alien, even not residing in France, may be summoned before the French Courts, for the fulfilment of obligations contracted by him in France towards a French person : he may be called before the French Courts for obligations contracted by him in a foreign country towards French persons. Civ. C. 11, 15, 822, 2123, 2128.

Art. 15. A Frenchman may be called before a

French Court for obligations contracted by him, in a foreign country, even towards an alien.

Art. 16. (Law of March 5, 1895). In all cases, an alien who is the original plaintiff or interpleads shall be obliged to give security, for the expenses and damages resulting from the suit, unless he owns real estate in France, of sufficient value to secure the payment thereof. Civ. C. 11, 14, 2040, 2041.

Chapter II.

Of the Loss of Civil Rights.

Section 1. — *Of the Loss of Civil Rights by the Loss of French Nationality.*

Art. 17. (Repealed by Law of August 10, 1927), [*see p.* 11.] *Shall lose their French nationality :*

1° *A Frenchman naturalized abroad or who obtains a foreign nationality, by operation of the law, upon his own application.*

If he is still subject to the duties of military service, in the regular army, a foreign naturalization only causes the loss of his French nationality, if it has been authorized by the French Government.

2° *A Frenchman who has repudiated his French nationality, in the cases provided for by subdivision* 4 *of article* 8 *and by articles* 12 *and* 18.

3° *A Frenchman who having accepted a public office conferred by a foreign Government, retains it, notwithstanding the order of the French Government to resign, within a fixed time.*

4° *A Frenchman who, without leave of his Government, enters military service abroad, without prejudice*

to the penal laws against the Frenchman who evades the obligations of military law.

Art. 18. (Repealed by law of August 10, 1927) [*see p.* 11.] *A Frenchman who has lost his French nationality may recover it, provided he resides in France, by obtaining his reinstatement by decree. French nationality may be granted by the same decree to the wife and the children of full age, if they apply therefor. The minor children of the father or mother thus reinstated become French, unless they decline such nationality within the year following their majority, by complying with the provisions of article* 8, *paragraph* 4.

Art. 19. (Repealed by law of August 10, 1927), [*see p.* 11.] *A Frenchwoman who marries an alien follows the nationality of her husband, unless her marriage does not confer his nationality upon her, and in that event she remains French. If her marriage is dissolved by the death of her husband, or by divorce, she recovers her French nationality, with the authorization of the Government, provided she resides in France, or returns there, declaring her intention to remain.*

In case the marriage is dissolved by the death of the husband, French nationality may, at the request of the mother, be bestowed upon the minor children, by the same decree of reinstatement or by a subsequent decree, if the application is made by the guardian, with the approval of the family council.

Art. 20. (Repealed by law of August 10, 1927), [*see p.* 11.] *Individuals who acquire French nationality, in the cases provided for by articles* 9, 10, 18 *and* 19, *can only take advantage thereof in connection*

with the rights which have accrued to their benefit, since that time.

Art. 21. (Repealed by law of August 10, 1927), [*see below*] *A Frenchman who enters military service abroad, without the authorization of the Government, cannot return to France, except by virtue of an authorization granted by decree, and can only recover his French nationality, by complying with the conditions imposed in France upon an alien to obtain an ordinary naturalization.*

THE LAW OF AUGUST 10, 1927.

On Nationality.

Art. 1. Are French :

1°. Every legitimate child born of a Frenchman in France or abroad;

2°. Every legitimate child born in France of a father likewise born there;

3° Every legitimate child born in France of a French mother;

4°. Every natural child of which the filiation is established, during his minority, by acknowledgment or judgment, when the person who is first proved to be his parent, is French;

If the filiation is established by the same instrument or the same judgment, as regards the father and the mother, the child follows the French nationality of the father;

Legitimation of a child who is a minor confers upon him the French nationality of his father, if he does not already possess it.

5° Every natural child born in France, when the father or mother, whose nationality he should follow, according to the terms of paragraph 4, first subdivision, was born there.

6° Every natural child born in France, when the parent whose nationality he should not follow according to the terms of the foregoing provision, is French.

7° Every individual born in France of unknown parents, or whose nationality is unknown.

Art. 2. Are French, subject to the privilege of declining such nationality, during the year following their majority, as fixed by French Law;

1° Every legitimate child born in France of a foreign mother likewise born there;

2° Every natural child born in France of foreign parents, when the one whose nationality he should not follow, according to the terms of article 1, was likewise born there.

To be entitled to decline French nationality, the interested party must prove, by an attestation in due form of his Government, annexed to his declaration, that he has retained the nationality of his parents: if need be, he shall also have to produce a certificate showing that he has complied with the military laws of his country, subject to the exceptions provided by treaties;

The privilege of repudiation is lost;

a) If, during the minority of the child, the surviving father or mother of the legitimate child, the surviving parent of the natural child, or the parent whose nationality such last named child

follows have been naturalized or have been reinstated;

b) If a declaration has been signed in the form prescribed by article 5, for the purpose of giving up such privilege, either by a minor over sixteen years of age and who has the capacity to do so, according to the terms prescribed by article 3 paragraph 2, or in his name before such age;

c) If the minor has voluntarily taken part in the formalities of recruitment, in accordance with the provisions of military Laws;

Such provisions do not apply to children born in France of diplomatic agents or of Consuls in the consular service of foreign nationality, who if they are domiciled there, shall have the right to claim French citizenship, from the age of sixteen up to the full age of twenty-two, under the conditions set forth in article 3.

Art. 3. Every individual born in France of an alien and domiciled in France, may become French up to the full age of twenty-one, by declaring that he claims French citizenship.

If he is over sixteen years of age, the appearer must be authorized by the parent possessing paternal authority, or if need be, by his guardian, after approval of the family council. If he is less than sixteen years, the declaration can be signed in his name by his legal representative, as above specified.

The recording of the declaration signed in accordance with article 5 hereinafter, can be rejected by reason of unworthiness. In that case, the decision shall be embodied in a decree issued with the concurrence of the Council of State. The applicant duly

summoned has the right to produce papers and briefs. The decision must be taken not more than six months after the declaration, or if its validity is contested, not more than six months after the day upon which the judgment holding that it is valid has become final.

Voluntary participation in the formalities of recruitment, under the conditions specified by military Laws for the sons of aliens born in France and subject to the qualifications mentioned in paragraph 2, operates as the declaration referred to in paragraph 1. The enrolment in the recruiting lists may be refused by the Prefect, for reason of unworthiness, the Council of State concurring.

The provisions of the present article do not apply to the individual against whom an order has been entered for his banishment, of which the effect has not been stayed.

Art. 4. Every individual born in France of an alien becomes French at the age of twenty-one years, if such individual is domiciled in France, unless he declines French citizenship, during the year following his majority, by complying with the requirements of article 2.

Such provision does not apply to:

a) The children born in France of diplomatic agents or of consuls in the consular service of foreign nationality who have the right to claim French citizenship, under the conditions specified in article 3.

b) The individual against whom an order has been entered for his banishment, the effect of which has not been stayed.

Art. 5. Every declaration signed either for the purpose of acquiring or declining French citizenship,

shall be received by the Justice of the Peace of the district in which the applicant has his domicile, or in default of same his residence. In case of residence abroad the declaration shall be signed before the diplomatic or consular agents.

The declaration shall be considered as having no effect, unless it has been recorded at the Department of Justice.

After it has been recorded, it must be published in the *Law Bulletin.* Nevertheless the omission of this formality shall not affect the rights of the applicant.

The recording shall be refused if the conditions required by Law are not fulfilled by the applicant. Such refusal and the reasons therefor are made known to the applicant within a period of three months after the declaration, and he shall have the right to carry the case before the Civil Courts, in accordance with articles 855 and the following of the Code of Civil Procedure.

If such notice has not been given and when the time above specified has expired, the Minister of Justice must deliver to the applicant, upon his request, a copy of his declaration bearing the indication that it has been recorded, unless such declaration is contested by reason of unworthiness.

A declaration duly recorded takes effect from the day upon which it has been signed.

Art. 6. The aliens who have been naturalized become French.

Naturalization is granted to an alien by decree issued after an investigation.

Can be naturalized, subject to the express authorization of his legal representative, according to the

terms of article 3, paragraph 2, in case of a minor :

1° Aliens of the full age of eighteen years, who can give proof of an uninterrupted residence in France, during three years.

A sojourn in a foreign country to fulfil the duties of an office conferred by the French Government, or a sojourn in a country comprised in the Customs Union with France, is equivalent to a residence in France.

2° Aliens of the full age of eighteen years, after an uninterrupted sojourn in France of one year, or as to whom the conditions of assimilation hereabove specified are fulfilled, if they have rendered important services to France, or have distinguished themselves by remarkable accomplishments, or have introduced either an industry or useful inventions or have created here, either industrial or other concerns, or agricultural enterprises, or have served in the French or Allied Armies, or have received diplomas from French Universities, or have married a person of French nationality, or, having been born in France, have established their domicile there, subsequently to the time when they became of full age.

3° Every individual born abroad, either of a French father whose nationality he does not assume, according to the provisions of article 1, section 4, paragraph 1, or of a Frenchwoman, or born in France or abroad of parents of whom one has lost his or her French nationality, whatever his age may be and irrespective of any residence, provided he is domiciled in France. The same rule applies to the descendants of families banished, in consequence of the revocation of the Edict of Nantes.

In the cases specified in the present paragraph, if

the application for naturalization concerns a minor under sixteen years of age, it is made by his legal representative, as is provided in article 3 paragraph 2, or with his authorization by the interested party in person, if he is over sixteen years of age.

A naturalized alien has the enjoyment of all civil and political rights attached to the status of a French citizen. Nevertheless he can only fulfil elective functions or duties, ten years after the decree of his naturalization, unless he has complied with the duties of active military service, in the French army, or unless such period of time has been shortened, for exceptional reasons, by a decree of the Keeper of the Seals based upon an explanatory report.

Art. 7. The following persons may obtain naturalization, without the necessity of a residence : a woman of full age or under age married to an alien, who subsequently to the marriage acquires French citizenship, and the children of full age of such alien.

The children under age, legitimate or legitimated and unmarried of a surviving father or mother who is naturalized, or acquires French citizenship, by virtue of articles 3 and 4, become French.

The natural children under age and unmarried become French when the parent who is naturalized or acquires French nationality, in accordance with the provisions of the articles referred to in the foregoing paragraph, is the one whose nationality they should follow, according to the terms of article 1 section 4, first paragraph.

The provisions of the two foregoing paragraphs do not apply:

1° to individuals who, being less than twenty-one

years of age, have been sentenced to banishment, of which the effect has not been stayed; 2° to those who serve or have served in the armies of their country of origin; the latter however may apply for French citizenship, without the requirement of any residence, after the age of eighteen years.

Children under age who are married have the right to apply for French citizenship, without the requirement of any residence, after the age of eighteen years.

Art. 8. A woman, who, being an alien, marries a Frenchman, only acquires French citizenship, upon her express application, or if in conformity with the provisions of the laws of her country, she follows necessarily the status of her husband.

A Frenchwoman who marries an alien retains her French nationality, unless she expressly declares that she wishes to acquire the nationality of her husband, in conformity with the provisions of the laws of his country.

She loses her French citizenship, if the husband and wife establish their first domicile, after the celebration of the marriage, outside of France, or if the woman acquires necessarily the nationality of her husband, by vitue of the laws of his country.

Art. 9. The following persons lose their French nationality :

1° A French citizen naturalized in a foreign country or who, upon his application, acquires a foreign nationality, in consequence of a law, after reaching the age of twenty-one years.

Nevertheless, until the expiration of a period of ten years, either from the time of enrolment in the regular army, or from the time of registry on the

recruiting lists, in case of dispensation with active service, an individual who acquires a foreign nationality does not lose his French citizenship, unless the consent of the French Government has been given.

2° A French citizen who has renounced his French nationality, in the case specified in article 2.

3° A French citizen even when under age who, possessing by virtue of a Law, and without manifestation of his will, a foreign nationality is, upon his application, authorized to retain it by the French Government.

4° A Frenchman who, fulfilling abroad duties in a public service, retains them, notwithstanding the order given to him by the French Government to resign, within a specified time.

This provision shall only extend to the wife and children under age, if a decision of the Civil Courts has intervened, in the manner specified in article 10.

5° A Frenchman who having acquired French citizenship, upon his application or that of his legal representatives, is declared by judgment to have lost such nationality.

Such loss can be caused :

a) For having committed acts prejudicial to the internal or external safety of the French nation,

b) For having perpetrated to the benefit of a foreign country, acts incompatible with the status of French citizenship and contrary to French interests,

c) For having evaded the obligations resulting for him from the laws on recruitment.

Art. 10. The action for forfeiture must be brought within a period of ten years from the acquisition of French citizenship, which period only runs from the

time of the promulgation of the present law, if such citizenship was obtained before the law took effect.

For persons having obtained French citizenship before the present law took effect, the forfeiture shall only be pronounced for facts subsequent to its promulgation.

The action is brought, at the instigation of the Minister of Justice, by the Public Prosecutor, before the Civil Tribunal of the domicile or in default of same, of the residence of the interested party.

When his domicile and residence are unknown or are in a foreign country, the action is brought before the Tribunal of the last known domicile or residence.

The procedure, the remedies and the costs of the action, together with the effects of the final decision are governed by the provisions specified in articles 2 to 12 inclusive of the Law of June 18, 1917, with the exception of paragraph 2 of article 11 of said Law: nevertheless the Judge appointed by the Tribunal, if need be, to take evidence, must comply with articles 3, 9 and 10 of the Law of the 8th of December 1897, otherwise the complaint and the subsequent proceedings shall be null and void.

Art. 11. A person who has lost his French citizenship may recover it at any age, by decree, provided he resides in France and is duly represented or authorized, according to the conditions specified in article 3 paragraph 2, if he is under age.

In case of reinstatement, he forthwith acquires all civil and political rights.

French citizenship may be granted to the wife and children of full age, if they apply therefor. The children under age and unmarried of the surviving

father or mother who has been reinstated become French, unless excluded, in consequence of the provisions of article 7, paragraph 4.

Natural children who are unmarried become French, under the conditions specified in article 7 paragraph 3, subject to the provisions of article 7 paragraph 4.

Art. 12. The persons who acquire French citizenship, in the cases provided by articles 3 and 4, or who recover the same, in the cases provided by article 11, can only claim the advantages thereof in connection with the rights to which they are entitled, since that time.

Art. 13. Article 8 of the Civil Code from the words "Are French" and articles 9, 10, 12, 13, 17, 18, 19, 20 and 21 of the same Code, together with the law of June 26, 1889, are repealed.

The provisions of article 7 paragraph 2 of the Law of July 3, 1917 are repealed, as to individuals having served in the French and Allied armies during the legal period of the war.

Temporary Provisions

Art. 14. *a*) Every Frenchwoman who has married an alien, before the present Law took effect, may, if she has resided ordinarily since two years at least on French territory, recover her French nationality, by a declaration made before the Justice of the Peace of her domicile, or should she not have any, of her residence, during the year of the promulgation of the present Law.

During the continuance of the marriage, this prerogative can only be asserted with the consent of the

husband, and if the matrimonial domicile is established on the national soil.

However, these two conditions shall not be required in case of absence or disappearance of the husband, or his legal incapacity, or of separation from bed and board, or if, the husband and wife having actually been separated since one year, an action for a separation or absolute divorce has already been brought.

Such declarations shall be signed, in accordance with the provisions of article 5 of the present Law.

The recording thereof may be refused, by reason of unworthiness, in accordance with the provisions of article 3 paragraph 3.

After the expiration of the time above specified, or in case of non-fulfilment of the conditions above set forth, as to domicile and residence, the wife who has lost her French citizenship, in consequence of her marriage to an alien, can only be reinstated, according to the terms of article 11 of the present Law.

The foregoing provisions apply also to women from Alsace and Lorraine who were married to a foreign subject, previously to November 11, 1918, and who in consequence of their marriage, have not been reinstated, as a matter of right, as French citizens, by virtue of paragraph 1 of the annex to section 5 of part 3 of the Treaty of Versailles.

b). Enlisting in the military service of a foreign country, even previously to the promulgation of the present law cannot occasion the loss of French citizenship, unless such loss has been upheld by a final decision of a Court of Justice.

c). Foreigners, naturalized previously to the promulgation of the present Law, are only deprived of

the ineligibility provided in article 6 as to legislative bodies.

Art. 15. The present Law applies to Algeria and to the colonies of Guadeloupe, Martinique and La Réunion.

However, the Senatus Consultum of July 14, 1865 and the Law of February 4, 1919 shall continue to remain in force, as regards Algerian natives, even on the territory of the metropolis.

Section II. — *Of the Loss of Civil Rights in consequence of Judicial sentences.*

Art. 22. Sentences to penalties of which the effect is to deprive the person sentenced of all participation in the civil rights hereinafter mentioned shall occasion civil death.

Art. 23. A sentence to natural death shall occasion civil death.

Art. 24. The other perpetual corporal penalties shall only occasion civil death, if the law attaches such effect to them.

Art. 25. By his civil death, the individual sentenced loses the ownership of all the property which he possessed; his succession becomes open for the benefit of his heirs, on whom his property devolves, in the same manner as in case of natural death and as if he had left no will.

He can no longer receive any inheritance, nor transmit in that way the property which he has acquired since then. He cannot dispose of his property wholly or in part, either by donation inter vivos or by will, nor receive anything in that way, excepting for nou-

rishment. He cannot be appointed guardian nor take any part in matters relating to guardianship. He cannot be a witness to a solemn or public instrument, nor be admitted to give testimony in Court. He cannot sue in Court, either as defendant or plaintiff, except in the name of and through a special curator appointed by the Court before which the action is brought. He cannot contract a marriage producing any civil effect. The marriage previously contracted by him is dissolved as to all its civil effects. The husband or wife and the heirs can respectively exercise the rights and causes of actions which natural death gives rise to.

Art. 26. *Defended sentences only occasion civil death from the day of the actual execution or execution in effigy.*

Art. 27. *Sentences by default shall only occasion civil death, at the end of five years, after the execution of the judgment in effigy, during which time the convicted person can enter an appearance.*

Art. 28. *Individuals sentenced by default shall be deprived of the enjoyment of their civil rights, during five years or until they enter an appearance, or are arrested during that time.*

Their property shall be administered and their rights exercised in the same manner as those of absentees.

Art. 29. *When an individual sentenced by default enters an appearance voluntarily, during the five years from the time of the execution or has been caught and made a prisoner, during that time, the judgment shall be set aside, as a matter of right : the individual convicted shall be given possession of his property: he shall be tried again; and if sentenced by*

a new judgment to the same penalty or a different penalty, also occasioning civil death, such civil death shall only take place from the day of the execution of the second judgment.

Art. 30. *When an individual sentenced by default who has only entered an appearance or has been made a prisoner, after the five years, is acquitted by the new judgment, or is only sentenced to a penalty which does not occasion civil death, he shall recover all his civil rights for the future, from the day upon which he appeared in Court; but the first judgment shall retain, as to the past, the effects produced by the civil death, during the interval elasped between the time of the expiration of the five years and the day of his appearance in Court.*

Art. 31. *If the person convicted by default dies during the period of grace of five years, without having entered an appearance, or without having been caught or arrested, he shall be considered as having died, in the full enjoyment of his rights. The judgment by default shall be set aside, as a matter of right, without prejudice nevertheless to the action which the aggrieved party is entitled to maintain and which shall only be brought against the heirs of the person convicted, as a civil remedy.*

Art. 32. *Prescription of the penalty shall not in any case reinstate the person convicted in his civil rights for the future.*

Art. 33. *The property acquired by the person so convicted, since the civil death has been incurred, and which he owns at the time of his natural death, shall belong to the State by escheatage.*

Nevertheless, the King is at liberty to make, in

favor of the widow, the children or the parents of the person so convicted, such provisions as humanity may suggest to him.

(*These articles have been repealed and replaced by the Law of May* 31, 1854.)

LAW OF MAY 31, 1854, ABOLISHING CIVIL DEATHS.

Art. 1. Civil death is abolished.

Art. 2. Sentences to perpetual corporal punishment shall occasion civil degradation and the legal interdiction established by articles 28, 29 and 31 of the Penal Code.

Art. 3. A person sentenced to perpetual corporal punishment cannot dispose of his property, wholly or in part, either by way of donation inter vivos or by will, nor take in that way, except for nourishment. Any will made by him previously to a defended sentence, which has decome final, is void. The present article only applies to a person sentenced by default at the end of five years after the execution in effigy.

Art. 4. The Government may relieve the person sentenced to perpetual corporal punishment from all or part of the incapacities mentioned in the foregoing article. It can grant him, at the place of the execution of the sentence, the enjoyment of civil rights, or of some of these rights of which be has been deprived, owing to the status resulting from his legal interdiction. The acts performed by the person so sentenced, at the place of the execution of the sentence have no binding effect, as regards the property which he owned at the time of his sentence,

or that which he has acquired, without consideration since that time.

Art. 5. The effects of civil death cease for the future in connection with those who have been so sentenced and are at the time civilly dead, subject to the rights acquired by third parties. The status of the persons so sentenced is governed by the provisions above recited.

TITLE SECOND

Of Records of Civil Status.

(Passed March 11, 1803; promulgated 21st of same month.)

Chapter I

General Provisions.

Art. 34. (Law of October 28, 1922). The records of civil status shall mention the year, the day and the hour when they were made, the first names and name of the officer of civil status, the first names, names, occupation and residences of all persons mentioned therein.

The dates and places of birth :

a) Of the father and mother in the records of birth and of acknowledgment;

b) Of the child in the records of acknowledgment;

c) Of the husband and wife in the records of marriage;

d) Of the decedent in the records of death which shall be indicated, when known. If not known the age of such persons shall be designated by their number of years, and likewise in all cases the age of

the appearers. As to the witnesses it shall only be stated whether they are of full age. Civ. C. 57 et seq. 76, 78 et seq., 85 et seq., 93 et seq.

Art. 35. Civil status officers cannot insert in the records they make, either by way of memorandum or declaration whatsoever, anything beyond what the appearers must declare. Civ. C. 42, 55 et seq.

Art. 36. When the interested parties are not obliged to appear in person, they may be represented by an attorney-in-fact with a special and authentic power. Civ. C. 44, 75, 252.

Art. 37. (Law of December 7, 1897). Witnesses produced in connection with records of civil status must be twenty one years of age at least; they may be related or not and of either sex; they shall be selected by the interested parties. Civ. C. 56, 71, 75 et seq., 86 et seq.

Art. 38. The officer of civil status shall read the record to the parties appearing or to their attorney-in-fact, and to the witnesses.

It shall be mentioned therein that this requirement has been complied with. Civ. C. 36 et seq., 39, 50.

Art. 39. Such records shall be signed by the officer of civil status, by the appearers and the witnesses; the cause preventing the appearers and the witnesses signing shall be mentioned. Civ. C. 50.

Art. 40. The records shall be entered, in each district, in one or several registers kept in duplicate. Civ. C. 42, 48, 50, 52, 60 et seq., 63, 80, 92, 95 et seq.

Art. 41. The registers shall be numbered from the first to the last page and each leaf shall be initialed

by the president of the Tribunal of First Instance or by the Judge replacing him. Civ. C. 50, 63.

Art. 42. The records shall be inscribed in the registers consecutively, without any blanks. The corrections and additions shall be approved and signed in the same way as the body of the instrument. There shall be no abbreviations and no date shall be written in figures. Civ. C. 39, 50.

Art. 43. The registers shall be closed and ended by the officer of civil status, at the expiration of each year; and, within one month, one of the duplicates shall be deposited in the archives of the district, the other in the clerk's office of the Tribunal of First Instance. Civ. C. 50 et seq., 53, 95.

Art. 44. The powers-of-attorney and other papers which must remain annexed to the records of civil status, after being initialed by the person who has produced them and the officer of civil status, shall be deposited in the clerk's office of the Tribunal, with the duplicate register which has to be deposited in said clerk's office. Civ. C. 36, 50, 68, 70.

Art. 45. (Law of August 9, 1919). Any person can obtain, from the custodians with whom the registers of civil status are deposited, copies of the records entered in such registers, with the exception specified in article 57.

Faith shall be given to the certified copies from the registers which must indicate in full the date of delivery and bear the signature and seal of the office from which they emanate, until a plea of forgery has been entered. They shall also be legalized, when they are to be produced before foreign offices, unless there are international regulations to the contrary.

Extracts may also be delivered which shall contain, in addition to the name of the district where the record has been made, a full copy of the record with the additions and marginal notes, with the exception of every thing relating to the papers produced to the officer of civil status who has made the record and to the appearance of the witnesses. Full faith shall be due to such extracts, until a plea of forgery has been entered.

Art. 46. When no registers have existed or if they have been lost, proof shall be made by documents or by witnesses; and in such cases, marriages, births and deaths can be proved either by the books and papers emanating from a deceased father and mother or by witnesses. Civ. C. 194, 323 et seq., 1331, 1415.

Art. 47. Faith shall be given to every record of civil status of a French person or a foreigner made in a foreign country, if drawn up according to the form in use in said country.

When one of such records applying to French persons shall be transmitted to the Department of Foreign Affairs, it shall remain on file there, in order that certified copies thereof may be delivered. Civ. C. 3, 11 et seq., 59 et seq., 86, 170 et seq., 999.

Art. 48. Every record of civil status of French persons in foreign countries, shall be valid, if it has been drawn up in accordance with French law by diplomatic agents or consuls.

A duplicate of the registers of civil status kept by these agents shall be forwarded, at the end of each year, to the Department of Foreign Affairs, which shall have the custody thereof and may deliver extracts therefrom. Civ. C. 3, 47, 170 et seq., 999.

Art. 49. (Law of August 17, 1897). Whenever a reference applying to civil status should be mentioned in the margin of a record already entered, it shall be made by the officer of his own accord.

The officer of civil status who has drawn up or transcribed the record which has to be entered, shall make such entry in the registers in his custody, within three days.

He shall, within the same time, forward a notice to the District Attorney of his county, who shall see that the entry is made, in the same form, in the registers existing in the archives of the counties, or of the clerk's offices or in those of all other public places of registry. Civ. C. 62, 76, 99 et seq., 198 et seq., 331.

Art. 50. Any violation of the foregoing articles on the part of public officers therein named, shall be prosecuted before the Tribunal of First Instance and shall be punished by a fine which may not exceed one hundred francs. Civ. C. 34 et seq.

Art. 51. Every custodian of records shall be civilly responsible for the alterations made therein, subject to his right to prosecute, if there is occasion therefor, the persons guilty of such alterations. Civ. C. 52, 1382 et seq.

Art. 52. All alterations, all forgeries in records of civil status, the inscription of such records on a loose sheet, or in any other manner than in the registers therefor intended, shall entitle the interested parties to damages, without prejudice to the penalties specified in the Penal Code. Civ. C. 1382 et seq.

Art. 53. The King's attorney (*Republic's attorney*) of the Tribunal of First Instance is under obligation

to examine the state of the registers, when they are deposited in the clerk's office: he shall draw up a summary report of such examination; he shall give notice of the misdemeanors or felonies committed by the officers of civil status and shall demand their conviction to fines. Civ. C. 49 et seq., 99, 156, 192, 193.

Art. 54. In all cases in which a Tribunal of First Instance takes cognizance of actions relating to civil status, the interested parties shall have the right to attack the judgment. Civ. C. 99 et seq.

Chapter II.

Of Records of Birth.

Art. 55. (Law of November 20, 1919). Declarations of birth shall be made to the officer of civil status of the place, within three days of the confinement.

When a birth has not been declared within the legal time, the officer of civil status can only record it in the registers, by virtue of a judgment of the Tribunal of the county wherein the child was born, and a summary entry shall be made in the margin, at the date of the birth. If the place of birth is unknown the Tribunal having jurisdiction shall be the one of the residence of the applicant.

(Law of June 21, 1903). In foreign countries the declarations shall be made to the diplomatic agents or consuls, within ten days of the confinement. Nevertheless such time may be extended in certain

consular circuits, by virtue of a decree of the President of the Republic, which shall specify the duration and conditions of the extension. Civ. C. 56, 59, 93.

Art. 56. The birth of a child shall be declared by the father, or in default of the father, by the physicians, surgeons, midwives, health officers or other persons who may have been present at the confinement; and when the mother has been delivered away from her residence by the person in whose house she has been delivered.

(Law of February 7, 1924). Records of birth shall be drawn up at once. Civ. C. 37 et seq., 59, 319 et seq.

Art. 57. (Law of February 7, 1924). Records of birth shall indicate the day, the hour and the place of birth, the sex of the child, and the first names which have been given to him, the first names, names, ages, occupations and residences of the father and mother, and, if need be, those of the applicant. If the father and mother of a natural child or one of them have not been made known to the officer of civil status, nothing shall be mentioned in the registers in connection therewith.

(Law of November 30, 1906). No one outside of the District Attorney, of the child, of his ascendants and descendants in the direct line, of the husband and wife, of a guardian or legal representative if the child is under age or in a state of incompetency, can obtain a full copy of a record of birth, unless it be his own, except by virtue of an authorization granted, without charge, by the Justice of the Peace of the district where the record has been made, and upon the written request of the interested party.

If such person does not know how to sign or cannot

sign, such inability is mentioned by the mayor or police captain, who shall certify, at the same time, that the application is made at the instigation of the interested party.

In case of refusal, the application is carried before the Civil Tribunal of First Instance which shall dispose of the case, by an order upon motion.

The custodians of the registers shall be obliged to deliver to all applicants extracts indicating the year, the day, the hour and the place of birth, the sex of the child, the first names given to him, the names, first names and occupation and residence of the father and mother as they appear from the declarations contained in the records of birth, or the marginal notes thereof and reproducing the statement called for by the last paragraph of article 76 of the Civil Code without other information. Civ. C. 34 et seq.

Art. 58. Every person who may have found a newly-born child is required to hand him to the officer of civil status, with the clothing and other things found with the child and shall declare all the circumstances, as to time and place, where such child has been found.

A full official report shall be drawn up, giving also the apparent age of the child, his sex, the names which shall be given to him, and the civil office to which he has been confided. Such official report shall be recorded in the registers.

Art. 59. (Law of February 7, 1924). In case of birth during a sea voyage, a record shall be drawn up, within three days of the confinement, upon the declaration of the father, if he is on board.

(Law of June 8, 1893). If the birth takes place

during a stoppage in port the record shall be drawn up in the same manner, if it is impossible to communicate with the shore, or, if in a foreign country, there is no French diplomatic or consular agent holding the powers of an officer of civil status, in the port.

Such record shall be drawn up, viz: on ships of the Navy, by the officer of the naval Commissariat, or in default of same by the captain or the individual acting as such, and on other ships, by the captain, master or owner, or the individual acting as such.

The circumstances under which the record has been drawn up, as above provided, shall be stated. The record shall be entered on the ship's register at the end of the list of the crew. Civ C. 34 et seq., 60 et seq., 86 et seq.

Art. 60. (Law of June 8, 1893). At the first port where the ship calls, for any cause other than to lay up, the officer who has drawn up the record is obliged to deposit two certified copies of each record of birth made on board.

Such deposit shall be made, viz: if the port is French, at the bureau of equipment, by the ships of the Navy, and at the bureau of maritime enrolment by other ships: if the port is foreign, in the hands of the French consul. In case there should be no bureau of equipment in such port, no bureau of enrolment and no consul, the deposit shall be deferred until the next port is reached at which a stop or a stay is made.

One of the certified copies so deposited shall be forwarded to the Minister of the Navy who shall transmit it to the officer of civil status of the last domicile of the father of the child, or of the mother, if the father is unknown, in order that it may be

recorded in the registers : if the last domicile cannot be found, or is outside of France, the recording shall take place in Paris (*at the Mayor's office of the 1st district*).

The other certified copy shall remain on file in the archives of the consulate or of the bureau of maritime enrolment.

An entry of such transmission and deposit made in accordance with the provisions of the present article shall be made in the margin of the original records by the commissioners of enrolment or by the consuls. Civ. C. 59, 61 et seq., 86, 92, 94, 98, 991.

Art. 61. (Law of June 8, 1893). Upon arrival of the ship in the port where it is to lay up, the officer who has drawn up the record shall be bound to deposit, at the same time as the ship's book, a certified copy of each record of birth drawn up on board, of which a copy has not been filed in accordance with the provisions of the foregoing article.

Such filing shall be made for the ships of the Navy, at the Bureau of equipment and for other ships at the Bureau of Maritime Enrolment.

The certified copy so filed shall be forwarded to the Minister of the Navy, who shall transmit it, as is stated in the foregoing article. Civ. C. 59 et seq.

Art. 62. (Law of June 8, 1893). The instrument of acknowledgment of a natural child shall be recorded in the registers, at its date, and an entry shall be made in the margin of the record of birth, if it exists.

In the cases provided by article 59, a declaration of acknowledgment may be received by the officers

who can act, according to that article and in the manner therein set forth.

The provisions of articles 60 and 61 relating to the filing and transmission shall apply in that case. Nevertheless the certified copy forwarded to the Minister of the Navy shall be transmitted by him preferably to the officer of civil status of the place where the record of birth of the child has been drawn up or transcribed, if such place is known. Civ. C. 49, 59 et seq., 331 et seq., 334 et seq.

Chapter III.

Of Records of Marriages.

Art. 63. (Law of April 8, 1927). Before the celebration of a marriage, the officer of civil status shall make one publication by way of a notice posted at the door of the City Hall. Such publication shall state the first names, names, occupation, domiciles and residences of the future husband and wife and also the place where the marriage is to be celebrated. Civ. C. 40 et seq., 64 et seq., 97, 166 et seq., 192, 193, 388, 488.

Art. 64. (Law of April 8, 1927). The notice provided for in the foregoing article shall be posted at the door of the City Hall, during ten days.

The marriage cannot be celebrated before the tenth day, after and exclusive of the day of the publication.

If the posting is interrupted, before the expiration of such time, such fact shall be mentioned in the notice which has ceased to be posted at the door of the City Hall. Civ. C. 192 et seq.

Art. 65. (Law of June 21, 1907). If the marriage has not been celebrated within one year from the expiration of the time of publication, it cannot be celebrated until a new publication has been made, in the manner above provided. Civ. C. 63, 64.

Art. 66. Notices of opposition to the marriage shall be signed on the original and on the copy by the persons objecting to it or their attorney-in-fact by virtue of a special and authenticated power: they shall be served with a copy of the power upon the parties personally or at their residence and upon the officer of civil status who shall stamp the original. Civ. C. 67 et seq., 172 et seq.

Art. 67. (Law of April 8, 1927). The officer of civil status shall forthwith make a summary entry of the oppositions in the registers of marriages; he shall also make an entry of the judgments or of the withdrawals of the oppositions, of which certified copies have been delivered to him, in the margin of the record of said oppositions. Civ. C. 76, 177 et seq.

Art. 68. In case of opposition, the officer of civil status cannot celebrate the marriage until the withdrawal of the opposition has been handed to him, under penalty of a fine of three hundred francs and subject to all damages. Civ. C. 76.

Art. 69. (Law of August 9, 1919). When the publication has been made in several counties, the officer of civil status of each county shall forward forthwith to the one who is to celebrate the marriage a certificate showing that no opposition exists. Civ. C. 76, 166 et seq.

Art. 70. (Law of July 11, 1929). The certificate

of the record of birth handed by each of the future husband and wife to the officer of civil status who is to celebrate their marriage shall comply with the last paragraph of article 57 of the Civil Code, with the indication of the married status of the father and mother, if need be, or when the consent of the parents is required by law for the marriage, with the acknowledgment applying to the child.

Such certificate must not have been delivered more than three months previously, if delivered in France, or more than six months previously if delivered in a colony or at a consulate. Civ. C. 49, 71 et seq., 76, 155.

Art. 71. (Law of July 11, 1929). The future husband or wife who is unable to procure such certificate may produce in its stead a certificate of identity delivered by the Justice of the Peace of his or her place of birth, or his or her domicile.

(Law of February 7, 1924). The certificate of identity shall contain a declaration made by three witnesses, of either sex, related or not related, of the first names, names, occupation and domicile of the future husband and wife and of those of the father and mother of the same, if they are known; the place and as far as possible the time of the birth and the causes which prevent the production of a certificate thereof. The witnesses shall sign the certificate of identity with the Justice of the Peace, and if any of them cannot or do not know how to sign, a statement thereof shall be inserted. Civ. C. 70, 72, 155.

Art. 72. The certificate of identity shall be presented to the Tribunal of First Instance of the place where the marriage is to be celebrated. The

Tribunal, after hearing the King's Attorney (*Republic's Attorney*) shall grant or refuse its approval, according to whether it finds the declarations of the witnesses and the causes which prevent the production of the certificate of birth sufficient or insufficient. Civ. C. 70 et seq.

Art. 73. (Law of August 9, 1919). The authenticated instrument of consent of the father and mother, or grandfathers and grandmothers, or, in default of same, of the family council shall contain the first names, names, occupation and domicile of the future husband and wife and of all those who have been parties to the instrument and also the degree of their relationship.

(Law of February 28, 1922). Except in the case specified in article 159 of the Civil Code, the instrument granting the consent is drawn up either by the notary or the officer of civil status of the domicile or residence of the ascendant, or in a foreign country by the French diplomatic or consular agents. When it is drawn up by the officer of civil status, it need not be legalized, unless there are international obligations to the contrary, and only when it has to be produced before foreign officials. Civ. C. 148 et seq., 159, 182, 183, 1317.

Art. 74. (Law of June 21, 1907). The marriage shall be celebrated in the county of the domicile or residence of the husband or wife established by a continuous habitation of one month at least upon the date of the publication specified by law. Civ. C. 102 et seq., 165 et seq., 191, 192.

Art. 75. (Law of August 9, 1919). Upon the day designated by the parties, after the expiration of the

time for the publication, the officer of civil status shall read to the parties, in the City Hall, in the presence of two witnesses, related or not, the papers above mentioned relating to the civil status of the parties and to the formalities of the marriage and he shall also read articles 212, 213 and 214 of the Civil Code.

Nevertheless in case of serious impediment, the Republic's attorney of the locality where the marriage is to take place may enjoin the officer of civil status to proceed to the domicile or residence of one of the parties to celebrate the marriage. In case of imminent danger of death of either the future husband or wife, the officer of civil status may go there, before any order or authorization is given by the Republic's Attorney; but he must then notify him as soon as possible of the necessity of performing such celebration outside of the City Hall.

All of which shall be mentioned in the record of marriage.

The officer of civil status shall ask the future husband and wife and, if they are under age, the ascendants present at the celebration and authorizing the marriage to declare whether a marriage contract has been made and, in the affirmative, the date of the contract and the name and place of residence of the notary who has drawn it up.

If the papers produced by either the husband or the wife are at variance as to the first names or the spelling of the names, he shall ask the one to whom they relate and if such one is under age, the closest ascendants present at the celebration, to declare whether the variance results from an omission or error. If the ascendants are not present they shall

certify the identity in the consent given by them in legal form. The Tribunal which acts as family council shall, if need be, give the same attestation, in the certificate granting its consent. In case of death of the ascendants, the identity shall be validly attested, as regards minors, by the family council and, as to persons of full age, by their own declarations.

He shall receive from each party, one after the other, the declaration that they wish to take each other as husband and wife : he shall pronounce, in the name of the law, that they are united by marriage, and he shall immediately draw up a record to that effect. Civ. C. 76, 165 et seq., 191, 212 et seq.

Art. 76. (Law of February 4, 1928). There shall be stated in the record of marriage :

1° The first names, names, occupation, ages, dates and places of birth, domicile and residence of the husband and wife;

2° The first names, names, occupation and domicile of the fathers and mother;

3° The consent of the fathers and mothers, grandfathers or grandmothers and that of the family council, whenever they are required;

4° The first names and names of the previous husband or wife of each of the parties, with the dates of death or divorce which has caused the dissolution of the marriage;

5° A statement to the effect that there is no opposition preventing the marriage;

6° The declaration of the contracting parties that they take each other as husband and wife and the statement by the officer of civil status that they are married;

7° The first names, names, occupation, domicile of the witnesses and their capacity as being of full age;

8° A declaration in answer to the question put as specified in the foregoing article, that a marriage contract has been or has not been made, and, as near as possible, the date of the contract, if it exists, and the name and place of residence of the notary who has drawn it up: all of which shall be done, under penalty for the officer of civil status, of the fine specified in article 50.

Whenever the declaration has been omitted or is incorrect, the correction of the instrument as to the omission or error may be applied for by the Republic's Attorney, without prejudice to the right of the interested parties, in accordance with article 99.

An entry of the celebration of the marriage shall be made in the margin of the records of birth of the husband and wife. Civ. C. 34 et seq., 49, 50 et seq., 63, 66 et seq., 73, 75, 88, 95, 99, 146, 148 et seq., 151 et seq., 159 et seq., 166 et seq., 172 et seq., 182, 183, 192, 1391, 1394.

Chapter IV.

Of Records of Death.

Art. 77. No burial shall take place without a permit of the officer of civil status, on unstamped paper and free of charge, and he shall not deliver such permit until he has gone to see the deceased person to make certain of the death, and only twenty-four hours after the death, excepting in the cases provided by police regulations. Civ. C. 86 et seq., 93.

Art. 78. (Law of February 7, 1924). The record

of death shall be drawn up by the officer of civil status of the county where the death has taken place, upon the declaration of a relative of the decedent, or of the person possessing the most reliable and complete information as to his civil status. Civ. C. 34, 37, 50 et seq., 86 et seq., 93 et seq.

Art. 79. (Law of February 7, 1924). The record of death shall contain :

1° The day, hour and place of death;

2° The first names, name, date and place of birth, occupation and domicile of the decedent;

3° The first names, name, occupation and domicile of the father and mother;

4° The first names and names of the husband or wife, if the decedent was married, or a widower or widow, or divorced;

5° The first names, name, age, occupation and domicile of the appearer, and, if there is occasion therefor, his degree of relationship to the decedent.

All of which in so far as may be known. Civ. C. 34 et seq.

Art. 80. (Law of November 20, 1919). When the death has occurred elsewhere than in the county where the decedent was domiciled, the officer of civil status who has drawn up the record of death shall, within the shortest possible time, send to the officer of civil status of the decedent's last domicile a certified copy of the record which shall be immediately transcribed in the register.

In case of death in hospitals or ambulances, or naval, colonial or civil hospitals, or other public establishments in France, or in the colonies, or in countries under protectorate, the directors, managers

or administrators of such hospitals or establishments must give notice thereof to the officer of civil status, or to the person acting in such capacity, within twenty-four hours.

This officer shall go there to make certain of the death, and shall draw up the record, in conformity with the foregoing article, upon the declarations which have been made to him and according to the information which he has gathered.

A register shall be kept in said hospitals, ambulances, and establishments, in which such declarations and information shall be recorded. Civ. C. 34 et seq., 77 et seq., 93 et seq.

Art. 81. When there are marks or indications of violent death or other circumstances which give rise to suspicion, the burial shall not take place until a police officer has, with the assistance of a physician, or a surgeon, drawn up an official report of the condition of the body and of the circumstances relating thereto, and also of all the particulars which he has been able to gather, as to the first names, name, age, occupation, place of birth and domicile of the decedent.

Art. 82. The police officer must forward, at once, to the officer of civil status of the place where the person has died, all the particulars contained in his official report, and according to which the record of death shall be drawn up.

The officer of civil status shall forward a certified copy thereof to the officer of civil status of the domicile of the decedent, if it is known: such certified copy shall be recorded in the registers. Civ. C. 81.

Art. 83. The clerks of the criminal Courts must forward to the officer of civil status of the place where a person sentenced to death has been executed, within twenty-four hours after the execution of the sentences to capital punishment, all the particulars specified in article 79, and according to which the record of death shall be drawn up.

Art. 84. In case of death in a prison or a place of solitary confinement or detention, a notice thereof shall be given at once, by the doorkeepers or wardens to the officer of civil status who shall go there as is prescribed by article 80 and shall draw up the record of death. Civ. C. 85.

Art. 85. In all cases of violent death or of death in a prison or place of solitary confinement, or in case of capital punishment, such circumstances shall not be mentioned in the registers, and the records of death shall simply be drawn up in the manner prescribed by article 79. Civ. C. 79, 81, 83, 84.

Art. 86. (Law of February 7, 1924). In case of death during a sea voyage and under the circumstances specified in article 59, a record shall be drawn up within twenty-four hours, by the officers named in such article as having power to act, and in the manner therein set forth.

(Law of June 8, 1893). The originals and certified copies shall be deposited and forwarded in accordance with the provisions contained in articles 60 and 61.

The records of death shall be transcribed in the registers of civil status of the last domicile of the decedent, or if such domicile is unknown, in Paris, (at the Mayor's office of the 1st district). Civ. C. 59 et seq., 87 et seq.

Art. 87. (Law of June 8, 1893). If one or more persons figuring on the list of the crew or present on board, either of a ship of the Navy or of any other ship, fall overboard and the body is not found, an official report of the disappearance shall be drawn up by the officer filling the duties of officer of civil status, on board. Such official report shall be signed by the officer acting in such capacity and by the witnesses to the accident and shall be transcribed at the end of the list of the crew.

The provisions of articles 60 and 61 relating to the deposit and forwarding of records and certified copies thereof, shall apply to such reports. Civ. C. 59 et seq.

Art. 88. (Law of June 8, 1893). In case of presumption of total loss of a ship or of disappearance of part of the crew or passengers, if it has not been possible to draw up the official reports of disappearance specified in the foregoing article, a decision shall be taken by the Minister of the Navy, after an official investigation conducted without special rules, declaring the presumption of loss of the ship or the disappearance of all or part of the crew or passengers.

Art. 89. (Law of June 8, 1893). The declaration of presumption of death shall be made as is stated in the foregoing article, after an official investigation conducted, without any special rules, by the Minister of the Navy, in connection with all sailors or soldiers who have died in the colonies or in countries under protectorate or during expeditions beyond the seas, when no regular record of death has been drawn up. Civ. C. 88, 90 et seq.

Art. 90. (Law of June 8, 1893). The Minister of the Navy may forward a copy of such official reports

or decisions to the Attorney General of the county in which is located the Tribunal, either of the last domicile of the decedent, or of the port of registry of the ship, or finally of the place of death, and he may direct such magistrate to proceed, of his own accord, to have the deaths established by a judicial decision.

Such deaths may be established by a collective judgment of the Tribunal of the port of registry, in case of persons having disappeared in the same accident. Civ. C. 88 et seq., 91 et seq.

Art. 91. (Law of June 8, 1893). The interested parties may also institute proceedings to obtain a judicial declaration of death, in the manner provided by articles 855 and the following of the Code of Civil Procedure. In such case the petition shall be submitted to the Minister of the Navy, upon the instigation of the Public Prosecutor. Civ. C. 88 et seq., 99 et seq.

Art. 92. (Law of June 8, 1893). All judgments establishing a death shall be recorded, on their date, in the registers of civil status of the last domicile, or if the same is unknown, in Paris, (at the Mayor's office of the 1st district).

(Law of November 20, 1919). An entry mentioning the judgment and the recording thereof shall be made in the margin of the registers, on the date of the death, if the original record of death should have appeared in such registers upon that date; if only the transcription of the record should appear in the registers of civil status of the last domicile, a summary notice of the judgment shall be inserted at the end of the annual table of the registers of death of the year, and, if need be, of the decennial table.

Collective judgments shall be recorded in the registers of civil status of the port of registry: individual extracts therefrom may be delivered.

Judgments establishing a death shall take the place of records of civil status, and can be set up against third parties who shall only be entitled to have them rectified in accordance with article 99. Civ. C. 49, 60, 88 et seq., 99 et seq.

Chapter V.

Of Records of Civil Status relating to Soldiers and Sailors in certain Special Cases.

Art. 93. (Law of December 20, 1922). Records of civil status relating to soldiers and sailors of the State shall be drawn up as specified in the foregoing chapters.

(Law of December 11, 1924). Nevertheless outside of France and under the circumstances mentioned in this paragraph, such records, may at all times, be likewise drawn up by the officials hereinafter mentioned :

1° In mobilised bodies of troops by the paymaster or his substitute, when the organization includes such an office, and when it does not by the commanding officer; 2° At head-quarters or in a staff, by the quartermasters, or in their absence by their assistants; 3° For persons in the military service under his command and for prisoners, by the provost or his assistant; 4° In ambulances or sanitary establish-

ments for use of the army, by the directors of such formations or establishments, and by the managers of annexes or their assistants; 5° In the naval and colonial stationary or movable hospitals, by the head physician or his assistant; 6° In the colonies and countries under protectorate or during expeditions beyond the seas, by officers of the commissariat or by the quartermasters, or, in their absence, by the commanders of the expedition, station or detachment; 7° In localities occupied by French troops and for French persons who do not belong to the army, by all the officials mentioned in this paragraph, when the provisions specified in the foregoing chapters do not apply.

The officials mentioned in the foregoing article shall only be empowered to celebrate marriages when the future husband and wife are both of French nationality, French citizens or subjects.

In France, records of civil status may also be drawn up, in case of mobilization or of a siege, by the officials mentioned in the first five numbers of the foregoing second paragraph, but only when the municipal service can no longer operate in any way, in consequence of circumstances resulting from the state of war. The powers of these officials shall extend, under the same reserves, to persons not in the service who may be in besieged forts and fortified places.

The declarations of birth in the armies shall be made within ten days after the confinement.

(Law of December 11, 1924). In the armies, the records of death may be drawn up, by derogation from the foregoing article 77, even if the officer of civil status has not been able to go near the decedent, and by derogation from article 78 they can only be

drawn up on the attestation of two appearers. Civ. C. 34 et seq., 56 et seq., 76, 78 et seq., 94 et seq.

Art. 94. (Law of June 8, 1893). In all cases specified in the foregoing article, the officer who has drawn up a record shall forward a certified copy thereof to the Minister of War or of the Navy, as soon as means of communication are possible and within the shortest time, and such Minister shall see that it is transcribed in the registers of civil status of the last domicile; of the father, or if the father is unknown, of the mother, for records of birth; of the husband for records of marriage; and of the decedent for records of death. If the place of the last domicile is unknown, the recording shall take place in Paris (at the Mayor's office of the 1st district). Civ. C. 60, 93.

Art. 95. (Law of February 23, 1922). In the cases specified in article 93 a register of civil status must be kept: 1° In each body of troops or mobilized war formation for records relating to individuals named in the muster rolls of the body of troops or in those of the corps which has taken part in the making up of the war formation; 2° In every general headquarters and staff for records relating to all individuals employed or connected therewith; 3° In the provost-marshal's quarters, for all persons in the military service placed under the orders of the provost-marshal and for prisoners; 4° In every ambulance or sanitary establishment for use of the armies, in every annex of such formations or establishments, in every naval or colonial hospital for individuals under treatment or employed in those establishments, as also for the dead who are only

deposited there; 5° In every body operating separately in the colonies, in the countries under protectorate, or in case of expeditions beyond the seas.

The records relating to unattached persons either civil or military separated from the corps, service or formation to which they belong or are attached shall be entered in the registers of the corps, service or formation which is nearest to the place of death.

The registers shall be forwarded to the Minister of War or of the Navy to be deposited with the archives, immediately after they have been closed, which shall be done, at the latest, upon the day when the armies have been placed on a peace footing, or the siege is raised. Civ. C. 34 et seq., 93, 95.

Art. 96. (Law of June 8, 1893). The registers shall be paged and initialed: 1° By the chief of staff in the mobilised units belonging to the command to which he is attached; 2° By the commanding officer, for the units which do not belong to any staff; 3° In fortified cities or forts by the Governor of the city or Commander of the fort; 4° In the hospitals or ambulances belonging to the armies, by the head surgeon of the hospital or ambulance; 5° In the naval or colonial hospitals and units operating separately in the colonies, in the countries under protectorate and in case of expeditions beyond the seas, by the chief of staff or the officer acting as such. Civ. C. 41, 95.

Art. 97. (Law of June 8, 1893). When a marriage is celebrated in one of the cases specified in article 93, the banns shall be published at the place of the last domicile of the future husband: they shall also appear in the order of the day of the corps, twenty-five days before the celebration of the marriage

for individuals belonging to a corps, and on the order of the day of the army or of the army corps for unattached officers and for employees belonging to the army. Civ. C. 63 et seq., 166 et seq., 192.

Art. 98. (Law of June 8, 1893). The provisions of articles 93 and 94 shall apply to acknowledgments of natural children.

Nevertheless the transcription of such records shall be made, at the instigation of the Minister of War or of the Navy in the registers of civil status where the record of birth of the child has been drawn up or transcribed: and if no such record has been made, or if the place is unknown, in the registers specified in article 94 for the transcription of records of birth. Civ. C. 57, 62, 93 et seq., 334 et seq.

Chapter VI.

Of the Rectification of Records of Civil Status.

Art. 99. (Law of November 20, 1919). The rectification of records of civil status is ordered by the President of the Tribunal of the district in which the record has been drawn up, subject to an appeal. When the petition does not emanate from the Republic's Attorney, he must be given notice thereof. The President may always refer the case to the Tribunal: the Republic's Attorney shall give his opinion.

The rectification of records of civil status drawn up during a sea voyage, in a foreign country or in the armies, shall be submitted to the President of the Tribunal of the county in which the record has been transcribed: the same rule applies to records of death of which the transcription is ordered, according to article 80.

The rectification of judgments establishing a birth or death shall be applied for before the Tribunal which has declared that the birth or death has occurred : nevertheless when such judgment has not been given by a Tribunal of the metropolis, the rectification shall be applied for before the Tribunal of the county in which the judgment ratifying the declaration has been recorded. Civ. C. 54, 59 et seq., 80, 86 et seq., 198.

Art. 100. (Law of November 20, 1919). Court orders, judgments or decrees of a Court of Appeals directing that a rectification shall be made, can never be set up against the interested parties who have not applied for the same or who have not been summoned. Civ. C. 54, 99, 1351.

Art. 101. (Law of November 20, 1919). Court orders, judgments or decrees of a Court of Appeals directing that such rectifications shall be made, must be forwarded immediately by the Republic's Attorney to the officer of civil status of the place where the corrected record is transcribed. The enacting part of the same shall be recorded in the registers and an entry shall be made in the margin of the corrected record. Civ. C. 49 et seq.

TITLE THIRD.

Of Domicile

(Passed March 14, 1803; promulgated 24th of same month.)

Art. 102. The domicile of every Frenchman, as to the enjoyment of his civil rights, is at the place of his principal establishment. Civ. C. 7, 9, 10, 13, 74, 115, 165 et seq., 1247, 1258, 1264.

Art. 103. A change of domicile takes place in consequence of an actual residence in another place, coupled with the intention by the person of making it his principal establishment. Civ. C. 104, 105.

Art. 104. Proof of such intention shall result from a formal declaration made both to the Municipality of the place which the person has left and to the Municipality of the place to which he has transferred his domicile. Civ. C. 103, 105.

Art. 105. In default of a formal declaration, proof of such intention shall depend on circumstances. Civ. C. 103, 104.

Art. 106. A citizen called to assume a temporary or revocable public office shall retain the domicile which he had previously, if he has not manifested a different intention. Civ. C. 102, 103, 107.

Art. 107. The acceptance of an office conferred for life shall occasion an immediate transfer of domicile of the official to the place where he is to fulfil his duties. Civ. C. 106.

Art. 108. A married woman has no other domicile than that of her husband.

A minor not emancipated shall be domiciled with his father, mother or guardian : a person of full age under interdiction has his domicile with his guardian. (Law of February 8, 1893). A woman separated from bed and board ceases to have as her legal domicile the domicile of her husband.

Nevertheless in matters of personal status, all notices served upon a woman thus separated must also be served upon her husband, otherwise they shall be void. Civ. C. 12, 19, 214, 306, 311, 450, 489 et seq., 506 et seq.

Art. 109. Individuals of full age who are usually employed by or work for another person shall have the same domicile as the person who employs them or at whose place they work, when they live in the same house as that person. Civ. C. 102, 108.

Art. 110. The place where a succession opens shall be determined by the domicile. Civ. C. 784, 793, 822, 1150.

Art. 111. When an instrument contains on the part of the parties, or of one of them an election of domicile for the fulfilment of such instrument, in a place which is not the one of the real domicile, every service of notices, complaints and proceedings relating to the instrument may be made at the domicile selected, and before the Court of that domicile, Civ. C. 176, 1247, 1258, 1264, 2148, 2152, 2183.

TITLE FOURTH.

Of Absentees.

(Passed March 15, 1803; promulgated 25th of same month.)

Chapter I.

Of Presumption of Absence.

Art. 112. If it is necessary to provide for the administration of all or part of the property left by a person presumed to be absent and who has no attorney-in-fact, the Tribunal of First Instance shall dispose of the case, upon the application of the interested parties. Civ. C. 28, 110, 414, 817, 819, 838, 840.

Art. 113. The Tribunal, upon the application of the most diligent party, shall appoint a notary to represent the presumed absentees, in connection with the inventories, accounts, distributions, and liquidations in which they are interested. Civ. C. 134 et seq., 819, 838, 840, 1476, 1872.

Art. 114. It is a special duty of the Public Prosecutor to look after the interests of persons presumed to be absent, and he shall be heard in all proceedings relating to them. Civ. C. 123, 126.

Chapter II.

Of the Declaration of Absence.

Art. 115. When a person ceases to appear at the place of his domicile or residence and has not been heard from for four years, the interested parties may

institute proceedings before the Tribunal of First Instance to have the absence established. Civ. C. 102, 112.

Art. 116. For the purpose of establishing the absence, the Tribunal shall, according to the papers and documents produced, order an investigation to be made with the assistance of the King's Attorney (*Republic's Attorney*) in the district of the domicile, and in the district of the residence, if they are distinct from each other.

Art. 117. The Tribunal, in making its decision upon the application, shall moreover take into consideration the motives of the absence and the causes which may have prevented the receipt of news from the individual presumed to be absent.

Art. 118. The King's Attorney (*Republic's Attorney*) shall forward the interlocutory as well as the final judgments to the Minister of Justice, as soon as given, and the latter shall publish them. Civ. C. 112.

Art. 119. A judgment declaring absence shall only be given one year after the judgment ordering the investigation. Civ. C. 116.

Chapter III.

Of the Effects of Absence.

Section I.

Of the Effects of Absence in connection with the Property which the Absentee owned at the time of his Disappearance.

Art. 120. In case the absentee should not have

left a power of attorney for the administration of his property, his presumptive heirs, at the time of his disappearance, or of the last news received from him, may, upon a final judgment declaring the absence, be placed in temporary possession of the property which belonged to the absentee, at the time of his departure, or of the last intelligence received from him, on condition of giving security for their administration thereof. Civ. C. 123 et seq., 1987 et seq., 2011, 2018 et seq., 2040 et seq.

Art. 121. If the absentee has left a power of attorney, his presumptive heirs can only apply to have his absence established and have themselves placed in temporary possession after ten years have elapsed, since the disappearance or since the last news received from him.

Art. 122. The same rule shall apply, if the power of attorney expires; and in that event, the administration of the property of the absentee shall be provided for, in the manner specified in the first chapter of the present title. Civ. C. 112 et seq.

Art. 123. When the presumptive heirs have been placed in temporary possession, the will, if there is one, shall be opened, upon the application of the interested parties or of the King's Attorney (*Republic's Attorney*) of the Tribunal; and the legatees and donees, as well as all those who have rights to the property of the absentee depending upon his death, may exercise them temporarily, on condition of giving security. Civ. C. 120, 124, 129, 149 et seq., 817, 894, 1004, 1011, 1014 et seq., 1082 et seq., 1168, 1185 et seq., 1453 et seq., 1492 et seq., 2008 et seq., 2018 et seq., 2040 et seq.

Art. 124. The husband or wife having community rights, if either of them elects to continue the community, can prevent the granting of temporary possession and the temporary use of all rights depending upon the death of the absentee, and assume and retain, in preference to others, the administration of the property of the absentee. If the husband or wife asks for the temporary dissolution of the community he or she shall be entitled to his or her rights to take back and to all his or her legal and conventional rights, on condition of giving security for the things subject to restitution.

The wife who elects to continue the community shall retain the right to renounce it thereafter. Civ. C. 120, 1453 et seq., 1492 et seq., 2011 et seq.

Art. 125. Temporary possession is only a deposit, which gives to those who obtain it the administration of the property of the absentee and which makes them accountable to him, if he reappears or if news is received from him. Civ. C. 127 et seq.

Art. 126. Those who have obtained temporary possession, or the husband or wife who has elected to continue the community, shall cause an inventory of the personal property and securities of the absentee to be made, in the presence of the King's Attorney (*Republic's Attorney*) of the Tribunal of First Instance, or of a Justice of the Peace called in by the King's Attorney (*Republic's Attorney*).

The Tribunal shall order, if necessary, the sale of all or part of the personal property. In case of sale, the proceeds shall be invested together with the accrued income.

Those who have obtained the temporary possession

may, for their protection, request that the real estate be inspected by an expert appointed by the Tribunal, for the purpose of establishing its condition. His report shall be confirmed by the Tribunal in the presence of the King's Attorney (*Republic's Attorney*) : the expense thereof shall be taken out of the assets of the absentee. Civ. C. 114, 1731.

Art. 127. Those who, in consequence of being placed in temporary possesssion or of having the legal administration of property of an absentee, have had the enjoyment thereof, shall only be obliged to return to him one fifth of his income, if he reappears before fifteen years have elapsed, since the day of his disappearance, and one tenth, if he only reappears after fifteen years.

After an absence of thirty years, the whole income belongs to them. Civ. C. 29, 138, 1401.

Art. 128. All those who only have the enjoyment of property, in consequence of temporary possession, cannot convey or mortgage the real estate of the absentee. Civ. C. 132, 2126.

Art. 129. If the absence has lasted thirty years, since temporary possession has been granted, or since the time when the husband or wife having community rights has assumed the administration of the property of the absentee, or if one hundred full years have elapsed since the birth of the absentee, the sureties shall be discharged: all the interested parties may demand the distribution of the absentee's property and apply to the Tribunal of First Instance for a judgment granting final possession. Civ. C. 120, 130 et seq.

Art. 130. The succession of an absentee becomes

open from the day his death is established, for the benefit of his nearest heirs, at that time; and those who have had the enjoyment of the property of the absentee are obliged to return it, with the exception of the income to which they are entitled, by virtue or article 127. Civ. C. 110, 127, 131 et seq., 135 et seq., 138, 718 et seq., 1315.

Art. 131. If the absentee reappears, or if his existence is established, while the temporary possession lasts, the effects of the judgment establishing the absence shall cease, without prejudice to the measures for preservation prescribed in chapter 1st of the present title, for the administration of his property, if there is occasion therefor. Civ. C. 112 et seq., 130, 132.

Art. 132. If the absentee reappears or if his existence is established, even after final possession has been granted, he shall recover his property, in the condition in which it may be, and the proceeds of such of it as has been conveyed or the property acquired by way of investment, out of the proceeds of the property disposed of. Civ. C. 126 et seq., 129 et seq., 133.

Art. 133. The children or lineal descendants of the absentee may also, within thirty years computed from the time final possession was granted, demand the return of his property, as is specified in the foregoing article. Civ. C. 120, 131, 2262.

Art. 134. After a judgment declaring an absence, any person having rights to assert against the absentee, can only enforce them against those who have been given possession of the property, or who may have the legal administration thereof. Civ. C. 120, 124, 129.

Section II.

Of the Effects of Absence upon the eventual Rights which may belong to the Absentee.

Art. 135. Whoever claims a right accruing to a person whose existence is not known, shall prove that the said person was alive, when such right originated: until such proof is made, it shall be held that his claim cannot be maintained. Civ. C. 113, 136, 137, 138, 725, 744, 1039,1315 et seq.

Art. 136. If a succession becomes open in which a person is interested who is not known to be alive, it shall devolve exclusively upon those with whom he would have had the right to share it, or upon those who would have taken it, if he had not existed. Civ. C. 113, 135, 137, 138, 725, 744, 775, 1039.

Art. 137. The provisions of the two foregoing articles shall apply, without prejudice to the right to maintain an action to obtain an inheritance, or to the other rights which may belong to the absentee or to his legal representatives or assigns, and which shall only expire at the end of the time required for prescription. Civ. C. 130 et seq., 772, 2262.

Art. 138. So long as the absentee does not appear or no such suits are brought in his name, those who have obtained the estate shall be entitled to the income collected by them in good faith. Civ. C. 549 et seq., 2268 et seq.

Section III.

Of the Effects of Absence in connection with Marriage.

Art. 139. The absentee whose husband or wife marries again, is the only person who shall be entitled

to attack such marriage, in his or her own name, or by his or her attorney-in-fact holding proof that he or she is alive. Civ. C. 147, 184, 187 et seq., 312.

Art. 140. If a married person who is absent has left no relatives entitled to his or her succession, his wife of her husband may ask to be placed into temporary possession of the property. Civ. C. 120, 767, 1427.

Chapter IV.

Of the Care of Minor Children of a Father who has disappeared.

Art. 141. If a father has disappeared leaving minor children born of the same marriage, the mother shall take care of them and shall enjoy all the rights of the husband, in connection with their education and the administration of their property. Civ. C. 149, 150, 155, 371 et seq., 389.

Art. 142. Six months after the disappearance of the father, if the mother was dead, at the time of such disappearance, or if she happens to die before the absence of the father is declared, the family council shall confer the care of the children upon the closest ascendants, or in default of same to a temporary guardian. Civ. C. 155 et seq., 402 et seq., 405.

Art. 143. The same rule shall apply, if the husband or wife who has disappeared leaves minor children born of a previous marriage.

TITLE FIFTH.

OF MARRIAGE.

(Passed March 17, 1803; promulgated 27th of same month.)

CHAPTER I.

OF THE QUALIFICATIONS AND CONDITIONS REQUIRED TO CONTRACT MARRIAGE.

Art. 144. A male, until the completion of his eighteenth year, and a female, until the completion of her fifteenth year, cannot contract marriage. Civ. C. 170, 184, 185.

Art. 145. Nevertheless the King (*President of the Republic*) may grant dispensations as to age for serious causes. Civ. C. 63, 163, 164, 169.

Art. 146. There is no marriage when there is no consent. Civ. C. 174, 180 et seq., 201 et seq., 502 et seq., 1109.

Art. 147. No one can contract a second marriage before the dissolution of the first. Civ. C. 139, 170, 181, 184 et seq., 187, 201 et seq., 227 et seq.

Art. 148. (Law of July 17, 1927). Minors cannot contract marriage without the consent of their father and mother: in case of disagreement between the father and mother, such disagreement implies consent.

The disagreement which the present article and the following articles 150 and 158 refer to, is evidenced either by the terms of the notification specified in article 154 or by a letter of which the signature is legalized and which is addressed to the officer of

civil status who is to celebrate the marriage, or by an instrument drawn up in the form prescribed by article 73, second paragraph, or by the record of the celebration of the marriage.

The instruments which show the disagreement, in the cases specified in articles 150 and 158, shall be marked as stamped and registered without charge. Civ. C. 73, 182 et seq., 186.

Art. 149. (Law of February 7, 1924). If one of the two is dead, or is unable to express his or her decision, the consent of the other is sufficient.

It is not necessary to produce the record of death of the father or mother of either the future husband or wife, when the surviving husband or wife, or the father and mother of the decedent certify under oath that the death has occurred.

If the present residence of the father or mother is unknown, or if no news of them has been received since a year, the marriage can be celebrated, if the child and his father or mother who consents to the marriage, makes a declaration under oath to that effect.

All of which shall be mentioned in the record of marriage.

A false oath given in the cases specified in the present and following articles of the present chapter, shall be punished in the manner provided in article 363 of the Penal Code. Civ. C. 26, 28, 73, 112 et seq., 182 et seq., 489 et seq.

Art. 150. (Law of July 17, 1927). If the father and mother are dead or if they are unable to express their decision, the grandfathers and grandmothers take their place: in case of disagreement between a

grandfather and grandmother, in the same line, or in case of disagreement between the two lines such disagreement amounts to a consent.

(Law of February 7, 1924). If the present residence of the father and mother is unknown and if no news has been received from them since a year, the celebration of the marriage may take place, if the grandfathers and grandmothers, together with the child, make a declaration under oath, to that effect. The same rule applies when one or more of the grandparents give their consent to the marriage and the present residence of the others is unknown and no news has been received from them, since a year. Civ. C. 73, 182 et seq.

Art. 151. (Law of February 7, 1924). The production of a certified copy merely giving the enacting part of a judgment which declares the absence, or which has ordered an investigation as to the absence of the father, mother, grandfathers or grandmothers of either the future husband or wife, is equivalent to the production of their records of death, in the cases specified in articles 149, 150, 154, 158, 159 and 160 of the Civil Code.

Art. 152. (Repealed by Law of July 17, 1927). *In case of disagreement between parents who are divorced or separated from bed and board, the consent of the husband or wife in whose favor the divorce or separation has been granted and who has the custody of the child is sufficient.*

If these two conditions are not fulfilled, the father or mother who consents to the marriage may summon the other to appear before the Tribunal of First. Instance sitting in its Private Room : the Tribunal

having jurisdiction shall be the one of the domicile of the person who has the custody of the child : the decision shall be given at a public hearing and shall be final.

Art. 153. (Law of June 20, 1896). The ascendant serving a term of banishment, or kept in the colonies, in accordance with article 6 of the law of May 30, 1854, in consequence of a sentence to hard labor, shall be in the same position as the one who is unable to signify his decision. Nevertheless the future husband and wife shall always have the right to solicit and produce to the officer of civil status the consent given by such ascendant.

Art. 154. (Law of July 17, 1927). The children who have reached the full age of twenty-one years and until the full age of twenty-five years must prove that they have the consent of their father and mother, or the survivor of them. In case of consent of the father or mother, the celebration of the marriage shall take place.

If no such consent is given, the interested party shall notify his father and mother or the survivor of them, of the intended marriage, through a notary acting without the assistance of a second notary or of witnesses.

(Law of February 7, 1924). The instrument containing the notice shall be marked as stamped and registered without charge, and shall give the first names, names, occupation, domicile and residence of the future husband and wife, of their fathers and mothers and also the place where the marriage is to be celebrated.

It shall also contain the declaration that such notice

is given to them for the purpose of obtaining their consent and that in default of same, the celebration of the marriage shall be proceeded with.

(Law of July 17, 1927). If notwithstanding such notice, the father and mother or the survivor of them refuse their consent, the celebration of the marriage can only take place fifteen full days after the notice.

(Law of February 7, 1924). The present article does not apply to persons who contract a second or subsequent marriage.

Art. 155. (Law of February 7, 1924). In case of absence of the father and mother to whom the notice specified in article 154 is to be made, or if there is no judgment which has declared the absence or ordered an investigation as to the absence, the celebration of the marriage of persons of full age shall take place, upon their declaration under oath, that the present residence of their father and mother is unknown to them and that since a year, no news has been received from them. Civ. C. 70 et seq., 115 et seq., 141 et seq.

Art. 156. (Law of June 21, 1907). The officers of civil status who have celebrated marriages contracted by sons or daughters who have not reached the full age of twenty-one years, without the consent of their fathers and mothers, or of their grandfathers and grandmothers and of the family council, when it is required, being mentioned in the record of marriage, shall, at the instigation of the interested parties or of the Republic's Attorney of the Tribunal of First Instance of the district where the marriage has been celebrated, be sentenced to the fine specified in article 192 of the Civil Code. Civ. C. 3, 148.

Art. 157. (Law of December 11, 1924). The

officer of civil status who has not required proof that the notice prescribed by article 148, paragraph 2 and by article 152 paragraph 2 has been made, shall be sentenced to the fine specified in the foregoing article. Civ. C. 73, 151.

Art. 158. (Law of March 10, 1913). The natural child lawfully acknowledged who has not reached the full age of twenty-one years, cannot contract a marriage, without having obtained the consent of the one of his father or mother who has acknowledged him, or of the two, if he has been acknowledged by both.

(Law of July 17, 1927). In case of disagreement between the father and mother, such disagreement is equivalent to a consent.

(Law of February 7, 1924). If one of them is dead or if he is unable to express his wish, the consent of the other is sufficient. The provisions contained in paragraphs 3, 4 and 5 of article 149 apply to the natural child who is a minor.

(Law of March 10, 1913). The provisions contained in articles 151, 153, 154 and 155 shall apply to the natural child, after the full age of twenty-one years. Civ. C. 330 et seq.

Art. 159. (Law of March 10, 1913). If there are no father or mother or grandfathers or grandmothers, or if they are unable to express their wish, the minors under twenty-one years of age cannot contract marriage, without the consent of the family council.

The natural child who has not been acknowledged and the one who after being acknowledged has lost his father and mother or of whom the father and mother cannot express their wish, can only marry, before the full age of twenty-one years, when he has

obtained the consent of the family council, as specified in article 389 paragraph 13 of the Civil Code. Civ. C. 389, 405 et seq., 502.

Art. 160. (Law of February 7, 1924). If the present residence of the parents of the minor, under twenty-one years of age, of whom the death is not established, is unknown, or if such parents have not been heard from since a year, the minor shall make a declaration under oath, to that effect, before the Justice of the Peace of his residence, in the private chamber of such Justice, his clerk being present, and the Justice of the Peace shall make a record thereof.

If the minor is a natural child, the Justice of the Peace shall notify the Tribunal of First Instance designated in article 389, paragraph 13 of the present Code that the oath has been given and the Tribunal shall pass upon the application for authorization to marry in the same manner as for natural children not acknowledged.

If the minor is a legitimate child, the Justice of the Peace shall notify the family council that the oath has been taken and the council shall pass upon the application for authorization to marry. Nevertheless the minor may give the oath specified in the first paragraph of the present article, directly in the presence of the members of his family council. Civ. C. 25, 405 et seq.

Art. 161. Marriage is prohibited in the direct line between all legitimate or natural ascendants and descendants and the connections by marriage, in the same line. Civ. C. 184, 187, 190, 201 et seq., 334, 736 et seq.

Art. 162. (Law of July 1, 1914). In the col-

lateral line marriage is prohibited between a legitimate or natural brother and sister. It is prohibited between connections by marriage of the same degree, when the marriage which establishes the connection is dissolved in consequence of a divorce. Civ. C. 184, 187, 190, 201 et seq., 736.

Art. 163. Marriage is also prohibited between uncle and niece, aunt and nephew. Civ. C. 184, 187, 190, 201, 202.

Art. 164. (Law of April 16, 1832). Nevertheless the King (*the President of the Republic*) may for serious reasons, withdraw the prohibitions contained in article 162 to marriages between brothers-in-law and sisters-in-law, and in article 163 to marriages between uncle and niece, aunt and nephew. Civ. C. 145.

Chapter II.

Of the Formalities relating to the Celebration of Marriage.

Art. 165. (Law of June 21, 1907). Marriages shall be celebrated publicly, in the presence of the officer of civil status of the district in which one of the parties has his domicile or residence, at the time of the publication of banns specified in article 63, and in case of dispensation of publication of banns, at the time of the dispensation specified in the following article 169. Civ. C. 63 et seq., 102 et seq., 191.

Art. 166. (Law of June 21, 1907). The publica-

tion of banns required by article 63 shall be made at the Town Hall of the place where each of the contracting parties has his domicile or residence.

Art. 167. (Law of June 21, 1907). If the present domicile or the present residence has not lasted during six months continually, the publication of banns shall also be made at the place of the last domicile, and in default of domicile at the place of the last residence; if such residence has not lasted during six months continually the publication of the banns shall also be made at the place of birth.

Art. 168. (Law of August 9, 1919). If the future husband and wife or one of them are minors, the banns shall be published at the Town Hall of the domicile of the ascendants, under whose authority they are, in connection with the marriage. Civ. C. 148 et seq., 372, 388.

Art. 169. (Law of April 8, 1927). The Republic's Attorney of the district in which the marriage is to be celebrated may, for serious reasons, dispense with the publication of the banns and with any delay or with the publication of the banns only. Civ. C. 63 et seq., 145.

Art. 170. (Law of June 21, 1907). The marriage contracted in a foreign country between French subjects and a French subject and a foreigner shall be valid, if it has been celebrated according to the form in use in the country, provided it has been preceded by the publication of banns prescribed by article 63 of the title *Of Records of Civil Status* and provided the French subject has not violated the provisions contained in the previous chapter.

(Law of November 29, 1901). It shall likewise be so in case of a marriage contracted in a foreign country between a French subject and a foreigner, if it has been celebrated by French diplomatic agents or consuls, in accordance with French Law.

Nevertheless the diplomatic agents or the Consuls can only celebrate a marriage between a Frenchman and a foreign woman, in the countries designated by decrees of the President of the Republic.

Art. 171. (Law of November 29, 1901). Within three months after the return of the Frenchman to the territory of the Republic, the record of celebration of the marriage contracted in a foreign country under the conditions specified in paragraph 1 of the foregoing article, shall be transcribed in the public registers of marriages of the place of his domicile.

(Law of November 20, 1919). An entry of such transcription shall be made in the margin of the record of birth of both the husband and wife.

Chapter III.

Of Oppositions to Marriages.

Art. 172. The right to oppose the celebration of a marriage belongs to the person united by marriage to one of the two contracting parties. Civ. C. 66 et seq., 147.

Art. 173. (Law of August 9, 1919). The father, the mother and in default of the father and mother, the grandfathers and grandmothers may oppose the marriage of their children and descendants, even of full age.

After a judicial withdrawal of an opposition to a

marriage made by an ascendant, no new opposition emanating from an ascendant is receivable and can delay its celebration. Civ. C. 66 et seq., 148.

Art. 174. If there is no ascendant, the brother or sister, the uncle or aunt, a first cousin of full age can only enter an opposition in the following two instances:

1° When the consent of the family council required by article 160 has not been obtained;

2° When the opposition is based upon the state of insanity of the future husband or wife: such opposition, of which the Tribunal may order the absolute withdrawal, shall never be receivable, unless the opposing party applies for interdiction and obtains a judgment, within the time specified by the Court. Civ. C. 489 et seq.

Art. 175. In the two cases mentioned in the foregoing article, the guardian or curator cannot enter an opposition, during the continuance of the guardianship or curatorship, unless he has been authorized by a family council, which he may convene. Civ. C. 174, 405 et seq.

Art. 176. (Law of April 8, 1927). All notices of opposition shall mention the qualifications which entitle the proponent to formulate the opposition: they shall contain an election of domicile at the place where the marriage is to be celebrated; they shall also state the motives of the opposition and mention the text of the law on which the opposition is based: if all this has not been done they shall be void and the officer of civil status who has signed the notice of opposition shall be liable to dismissal. Civ. C. 66 et seq.

Art. 177. The Tribunal of First Instance shall give its decision upon the application to remove the opposition, within ten days.

Art. 178. In case of appeal, it shall be disposed of within ten days from the notice of appeal.

Art. 179. If the opposition is vacated, the opposing parties, with the exception however of the ascendants, may also be ordered to pay damages.

(Law of June 20, 1896). The judgments and decrees by default dismissing the oppositions to marriage cannot be reopened. Civ. C. 1146 et seq., 1382.

Chapter IV.

Of Actions for Annulment of Marriages.

Art. 180. A marriage which has been contracted without the free consent of the husband and wife, or of one of them, can only be attacked by the husband and wife or by the one whose consent was not freely given.

When there has been a mistake as to the person, the marriage can only be attacked by the one of the parties who has been deceived. Civ. C. 146, 201 et seq., 1109.

Art. 181. In the case specified in the foregoing article, the action for annulment can no longer be maintained whenever there has been continuous cohabitation during six months since the husband or wife has acquired his or her full freedom, or since the mistake has been discovered by him or her. Civ. C. 185, 191, 196.

Art. 182. A marriage contracted without the consent of the father and mother, of the ascendants or of the family council, when such consent was necessary, can only be attacked by those whose consent was required or by the one of the husband or wife who needed such consent. Civ. C. 148 et seq., 187, 201, 202.

Art. 183. An action for annulment can no longer be instituted by the husband or wife or by the parents whose consent was required, whenever the marriage has been expressly or tacitly approved of by those whose consent was necessary, or whenever one year has elapsed since they have had knowledge of the marriage, without objection on their part. Nor can it be instituted by the husband or wife, when one year has elapsed without objection on his or her part, since he or she has reached the age at which he or she could consent to the marriage of his or her own accord. Civ. C. 148.

Art. 184. Any marriage contracted in violation of the provisions contained in articles 144, 147, 161, 162, and 163, can be attacked either by the husband and wife themselves or by all the interested parties, or by the Public Prosecutor. Civ. C. 139 et seq., 190, 201, 202, 348.

Art. 185. Nevertheless the marriage contracted by the husband and wife who have not reached the requisite age, or of whom one of the two has not reached that age, can no longer be attacked: 1° When six months have elapsed since such one of them or both have reached the requisite age; 2° When the wife who has not reached that age, has conceived before the expiration of six months. Civ. C. 144.

Art. 186. The father, the mother, the ascendants and the family when they have consented to the marriage contracted in the case specified in the foregoing article, shall not be entitled to sue for its annulment.

Art. 187. In all cases in which an action for annulment can be instituted, in accordance with article 184, by all the interested parties, such action cannot be brought by collateral relatives or by the children born of another marriage, in the lifetime of the husband and wife, unless they have a vested and existing interest. Civ. C. 174.

Art. 188. The husband or wife to whose detriment a second marriage has been contracted, can apply for its annulment, even during the lifetime of the husband or wife to whom he or she was united. Civ. C. 139, 147, 201, 202.

Art. 189. If the newly married husband and wife set up that the first marriage is void, the validity or annulment of that marriage must first be passed upon.

Art. 190. The King's Attorney (*Republic's Attorney*) can and shall apply for the annulment of the marriage, during the lifetime of the husband and wife, and for a judgment ordering them to separate, in all cases to which article 184 refers and in accordance with the restrictions contained in article 185. Civ. C. 139 et seq., 199 et seq.

Art. 191. Every marriage which has not been publicly contracted and which has not been celebrated in the presence of the proper public official, can be attacked by the husband and wife, by the father and mother, the ascendants and all those having an

existing and vested interest, as also by the Public Prosecutor. Civ. C. 63 et seq., 75 et seq., 165.

Art. 192. (Law of June 21, 1907). If, previously to the marriage, the publication of the banns has not been made, as required, or if the dispensations allowed by law have not been obtained, or if the intervals between the publications of the banns and the celebration have not been observed as prescribed, the Republic's Attorney shall have the public official fined an amount not exceeding three hundred francs and shall have the contracting parties or those under whose authority they have acted fined in proportion to their fortune. Civ. C. 63 et seq., 166 et seq.

Art. 193. The penalties imposed in the foregoing article are incurred by the persons therein mentioned, for every violation of the provisions contained in article 165, even if such violations are not held to be sufficient to occasion the annulment of the marriage. Civ. C. 74 et seq., 165.

Art. 194. No one can claim the status of husband or wife and the civil effects of marriage, unless he or she produces a record of celebration inscribed in the register of civil status; except in the cases specified in article 46, under the title *Of Records of Civil Status.* Civ. C. 40, 46, 75 et seq.

Art. 195. Common repute shall not relieve the alleged husband and wife who may respectively avail themselves of it, from producing the record of the celebration of the marriage, before the officer of civil status. Civ. C. 40, 46, 321.

Art. 196. When common repute exists and the record of celebration of the marriage is produced,

neither the husband nor the wife is entitled to ask for the annulment of such record. Civ. C. 321, 322.

Art. 197. Nevertheless, if, in the case mentioned in articles 194 and 195, there are children born of two persons who have openly lived as husband and wife and who are both dead, the legitimacy of the children cannot be contested for the sole reason that the record of celebration is not produced, whenever the legitimacy is established by common repute, which is not contradicted by the record of birth. Civ. C. 319 et seq.

Art. 198. When the proof of the legal celebration of the marriage is established by the result of criminal proceedings, the recording of the judgment in the registers of civil status gives the marriage all its legal effects, from the day of its celebration, both as regards the husband and wife, as in favor of the children born of the marriage. Civ. C. 40, 49, 99 et seq., 326, 327.

Art. 199. If the husband and wife or one of them have died, without having discovered the fraud, a criminal action may be brought by all those who are interested in having the marriage declared valid, and by the King's Attorney (*Republic's Attorney*). Civ. C. 326, 327.

Art. 200. If the public official is dead when the fraud is discovered, a civil action shall be instituted against his heirs, by the King's Attorney (*Republic's Attorney*), in the presence of the interested parties and upon their denunciation. Civ. C. 724.

Art. 201. A marriage which has been declared to be void produces, nevertheless, civil effects, both as

regards the husband and wife and as regards the children, when it was contracted in good faith. Civ. C. 144 et seq., 161 et seq., 180 et seq., 191 et seq., 334.

Art. 202. If only the husband or the wife acted in good faith, the marriage only produces its civil effects as regards the one who has so acted and the children born of the marriage.

Chapter V.

Of the Obligations resulting from Marriage.

Art. 203. The husband and wife, by the sole fact of the marriage, assume mutually the obligation of feeding, supporting and educating their children. Civ. C. 349, 384, 852, 1409, 1448, 1558.

Art. 204. A child has no claim against his father and mother for his establishment by marriage or otherwise. Civ. C. 852, 1540.

Art. 205. (Law of March 9, 1891). Children owe nourishment to their father and mother and other ascendants who are in want. The succession of a predeceased husband or wife owes nourishment, in the same case, to the surviving husband or wife. The time within which it can be claimed is one year from the death, and in case of partition, it extends until the same is ended.

Such nourishment is provided for out of the estate. All the heirs, and in case of insufficiency, all the special legatees must contribute in proportion to what they receive.

However, if the decedent had expressly declared that a special legacy was to be paid in preference to the others, article 927 of the Civil Code shall be applied. Civ. C. 349, 384 et seq., 1558.

Art. 206. (Law of August 9, 1919). Sons-in-law and daughters-in-law owe likewise, under the same circumstances, nourishment to their father-in-law and mother-in-law, but such obligation ceases when the husband or wife, owing to whom the affinity existed, and the children born of his or her marriage with such husband or wife are dead. Civ. C. 1558.

Art. 207. The obligations resulting from these provisions are reciprocal. Civ. C. 205, 206.

Art. 208. Nourishment is only granted in proportion to the needs of the person who requires it and the fortune of the one who owes it.

Art. 209. When the person who furnishes the nourishment or the one who receives it, is placed again in such a position that the one can no longer give it, or the other is no longer in need of it wholly or in part, a release or a reduction can be applied for.

Art. 210. If the person who must furnish the nourishment establishes that he is unable to pay, the Tribunal may, after ascertaining the facts, order that he shall receive the individual to whom he owes nourishment in his home and feed and keep him.

Art. 211. The Tribunal can also decide whether the father or mother who offers to receive, feed and keep in his or her home the child to whom he or she owes nourishment, shall in that case be exonerated from paying such nourishment.

Chapter VI.

Of the Respective Rights and Duties of Husband and Wife.

Art. 212. Husband and wife owe each other fidelity, support and assistance. Civ. C. 75, 203 et seq., 229 et seq., 306 et seq. 1388 et seq.

Art. 213. The husband owes protection to his wife; a wife obedience to her husband. Civ. C. 1388.

Art. 214. The wife is obliged to live with her husband and to follow him wherever he deems proper to reside : the husband is obliged to receive her and to supply her with all that is necessary for the wants of life, according to his means and position. Civ. C. 108, 203 et seq., 268, 306, 1388, 1448, 1537.

Art. 215. A wife cannot sue in Court without the consent of her husband, even if she is a public trader or if there is no community, or in case of a separation of property. Civ. C. 344, 776, 905, 934, 940, 1029, 1124, 1304, 1388, 1449, 1538, 1576, 2208.

Art. 216. The husband's consent is not necessary when the wife is prosecuted criminally, or in a police Court. Civ. C. 226, 1424, 1990, 2139.

Art. 217. A wife, even when there is no community or in case of separation of property, cannot give, convey, mortgage or acquire property with or without consideration, without her husband joining in the instrument or without his written consent. Civ. C. 213, 215, 219, 225, 344, 362, 776, 905, 934, 940, 1029, 1124 et seq., 1304, 1388, 1426, 1427,

1431, 1449, 1535, 1538, 1555 et seq., 1576, 1940, 1990, 2253 et seq.

Art. 218. If a husband refuses to allow his wife to sue, the Judge may grant the authorization. Civ. C. 1576, 2208.

Art. 219. If a husband refuses to allow his wife to execute an instrument, the wife can have her husband summoned summarily before the Tribunal of First Instance of the district of the common domicile, and such Tribunal can grant or refuse its consent in the Judge's Chamber, after the husband has been heard or has been duly cited to appear.

Art. 220. A wife may, if she is a public trader, bind herself without the husband's consent in connection with the things which relate to her trade, and in that case she also binds her husband, if there is community of property between them.

She is not considered to be a public trader if she only retails the goods of her husband's business, but only when she has a separate business. Civ. C. 1426.

Art. 221. When a husband has been sentenced to a punishment with degrading corporal effects, even by default, a wife although of full age cannot, during the continuance of the sentence, sue in Court nor bind herself, unless she has been authorized by the Judge who may, in such a case, grant the consent without her husband having been heard or summoned. Civ. C. 1413, 1417, 1426 et seq.

Art. 222. If a husband has been interdicted or is absent the Judge may, after ascertaining the facts, authorize the wife to sue in Court or to bind herself.

(Law of Feb. 7, 1924). It shall likewise be so

if a husband has been convicted for abandoning his family. Civ. C. 120 et seq., 140 et seq., 489, 502, 2208.

Art. 223. Any general authorization, even given in a marriage contract, is only valid as to the management of the wife's property. Civ. C. 388, 1508, 1538, 1988.

Art. 224. If the husband is a minor, the wife must have the authorization of the Judge either to sue in Court or to bind herself. Civ. C. 481, 2208.

Art. 225. A cause of nullity based on a want of authorization can only be set up by the wife, the husband or their heirs. Civ. C. 942, 1125, 1241, 1304, 1312, 1413, 1417 et seq., 1449, 1555.

Art. 226. A wife can make a will without her husband's consent. Civ. C. 893, 895, 905, 940, 969, 1096.

Chapter VII.

Of the Dissolution of Marriage.

Art. 227. A marriage is dissolved:

1. — By the death of the husband or wife;

2. — By a divorce lawfully decreed;

3. — (Repealed by law of May 31, 1854). *By a final sentence against the husband or wife to a conviction occasioning civil death.*

Chapter VIII.

Of Second Marriages.

Art. 228. (Law of August 9, 1919). A wife cannot contract a second marriage until ten months have elapsed, since the dissolution of the previous marriage.

(Law of Dec. 9, 1922). Such time expires in case of confinement since the death of the husband.

(Law of February 4, 1928). The President of the Civil Tribunal of the district in which a marriage is to be celebrated may, by an order upon a simple petition shorten the time specified in the present article and by article 296 of the present Code, when it distinctly appears from the circumstances that since three hundred days the previous husband has not cohabited with his wife. Civ. C. 139, 164, 188, 296 et seq., 386.

TITLE SIXTH.

Of Divorce.

(Passed March 21 1803; promulgated 31st of same month.)

Chapter I.

Of Causes of Divorce.

Art. 229. A husband may sue for a divorce on account of his wife's adultery. Civ. C. 306, 312 et seq.

Art. 230. (Law of July 27, 1884). A wife may sue for a divorce on account of her husband's adultery.

Art. 231. Both parties may sue for a divorce on account of violence, cruelty, or gross insults, on the part of the one towards the other. Civ. C. 306.

Art. 232. (Law of July 27, 1884). A sentence against a husband or wife inflicting a degrading corporal punishment shall be for the other a cause of divorce.

Art. 233. (Repealed by Law of July 27, 1884). *The mutual and continuous consent of the husband and wife expressed in the manner specified by law under the conditions and after the trials which it prescribes, shall be sufficient proof that life in common is unbearable and that a peremptory cause of divorce exists between them.*

Chapter II.

Of the Procedure of Divorce.

Section I.

Of Proceedings of Divorces.

Art. 234. (Law of April 18, 1886). A husband or wife who wishes to bring an action for divorce presents his or her petition personally to the President of the Tribunal or the Judge acting as such.

If it is duly established that the person cannot attend, the Judge accompanied by his clerk shall go to the domicile of the husband or wife who is the plaintiff.

In case of legal interdiction resulting from a judgment, the petition for divorce can only be presented

by the guardian at the request or with the consent of the interdicted person.

Art. 235. (Law of April 18, 1886). The Judge after hearing the plaintiff and addressing to him the observations which he considers proper, orders at the end of the petition that the parties shall appear before him upon the day and at the hour which he fixes, and names a bailiff to serve the citation.

Art. 236. (Law of April 18, 1886). The Judge may in the order granting leave to issue a citation authorize the husband or wife who is the plaintiff to have a separate residence, indicating, if it is the wife, the place of the temporary residence. Civ. C. 307.

Art. 237. (Law of April 18, 1886). The petition and order written out at the head of the citation are served upon the husband or wife who is the defendant three days at least before the day named for the appearance, exclusive of the time allowed for distances : the citation shall be void unless all this has been done.

Such citation is served by the bailiff appointed and under sealed cover. Civ. C. 307.

Art. 238. (Law of April 18, 1886). Upon the day appointed the Judge hears the parties in person; if it is impossible for one of them to attend before the Judge, he selects a place where the reconciliation shall be attempted or issues a commission to hear the defendant: in case a reconciliation is not effected or in case of default he makes an order reciting that there is no reconciliation or a default, and authorizes the plaintiff to bring suit.

The Judge if necessary grants a new order respect-

ing the residence of the plaintiff husband or wife, the provisional custody of the children, the delivery of personal effects and he may also, if necessary, pass upon applications for alimony.

Such order is enforceable provisionally: it can be appealed from, within the time fixed by article 809 of the Code of Procedure.

In consequence of such an order, the wife is authorized to institute all proceedings for the preservation of her rights and to sue in Court, until the termination of the suit and of the proceedings resulting therefrom.

When the case is before the Court the provisional measures ordered by the Judge can be changed or completed during the pendency of the suit by judgment of the Tribunal, without prejudice to the right which the Judge always has of granting new orders at Chambers, respecting the residence of the wife.

The Judge may, according to circumstances, put the parties off, for a period not exceeding twenty days, before he authorizes the plaintiff to issue the citation; but he must order the necessary provisional measures.

The plaintiff, husband or wife, in a divorce suit must make use of the leave granted by the order of the Presiding Justice to issue the citation, within a period of twenty days from the date of such order.

In case the husband or wife has not made use of such leave within the said time, the provisional measures ordered for his or her benefit cease, as a matter of right. Civ. C. 307.

Art. 239. (Law of April 18, 1886). The case is conducted and decided in the usual manner, and the Public Prosecutor shall be heard.

The plaintiff may, at all stages of the case, change his action for divorce into an action for separation from bed and board.

Cross actions for divorce can be embodied in an ordinary writ of findings.

The Tribunal may decide to proceed with closed doors.

The publication of the proceedings in the press is prohibited in divorce cases, under penalty of a fine from 100 to 2,000 francs, as specified in article 39 of the law of July 30, 1881. Civ. C. 307.

Art. 240. (Law of April 18, 1886). The Tribunal can, either at the request of one of the interested parties or of one the members of the family, or at the instigation of the Public Prosecutor, or even of its own accord, order all provisional measures which it deems necessary in the interest of the children.

It also passes upon all applications relating to alimony during the pendency of the action, to fees and to all other urgent measures. Civ. C. 307.

Art. 241. (Law of April 18, 1886). The wife is obliged to prove that she has resided in the house selected, whenever she is called upon to do so : if she fails to make such proof, the husband can refuse to pay alimony, and if the wife is the plaintiff in the divorce suit, he can ask that it be decided that she is not entitled to continue the proceedings.

Art. 242. (Law of April 18, 1886). Both the husband and wife can from the time of the first order and with the permission of the Judge, given upon condition of referring back the matter to him, take protective measures for the preservation of his

or her rights, such as applying to have seals affixed on property of the community.

The same right belongs to the wife, even when there is no community, for the preservation of such of her property as the husband has the administration or enjoyment of.

The seals shall be removed upon the application of the more diligent party; the chattels and securities shall be inventoried and appraised, and the husband or wife who is in possession of them shall be appointed provisional custodian, unless it is otherwise ordered.

Art. 243. (Law of April 18, 1886). Any obligation contracted by the husband for which the community is made responsible, any conveyance made by him of real estate forming part thereof, after the date of the order referred to in article 235, shall be declared to be void, if it is moreover proved that the same has been made or consented to for the purpose of defrauding the wife of her rights.

Art. 244. (Law of April 18, 1886). A suit for divorce comes to an end by the reconciliation of the husband and wife which has taken place, either since the facts alleged in the complaint have occurred or since such complaint.

In both cases it shall be declared that the plaintiff's action is dismissed: such plaintiff can nevertheless introduce a new action for a cause arising or discovered since the reconciliation, and he or she can avail himself or herself of the former causes in support of the new application.

(Law of June 26, 1919). A divorce suit is also ended by the death of the husband or wife which has

occurred before the judgment has become final. Civ. C. 307.

Art. 245. (Law of April 18, 1886). When an investigation is necessary, it is conducted in accordance with the provisions of article 252 and the following, of the Code of Civil Procedure.

Relatives, with the exception of descendants and the servants of the husband and wife, can be heard as witnesses.

Art. 246. (Law of April 18, 1886). When the suit for divorce has been brought for any other cause than the one mentioned in article 232, the Tribunal may, even if the grievances are sufficiently established, refrain from granting the divorce immediately.

In such case it orders a separate residence and provisional measures, during a time which cannot exceed six months.

If the husband and wife have not become reconciled after the time fixed by the Tribunal, each of them can have the other cited to appear before the Tribunal within the time allowed by law, for the purpose of hearing the Court grant the divorce.

Art. 247. (Law of April 18, 1886). When the complaint has not been served upon the defendant personally, and when such defendant does not appear, the Tribunal may, before granting a judgment upon the merits, order the insertion in the newspapers of a notice for the purpose of bringing to the knowledge of such party the pendency of the suit in which he is interested.

The judgment or decree on appeal which grants a divorce by default is served by the bailiff appointed.

If such service has not been made upon the party personally, the Presiding Justice orders upon a simple petition, that the judgment be published by having an extract inserted in the newspapers which he selects. The default may be opened within one month, in case of personal service, or otherwise within eight months after the last publication.

Art. 248. (Law of April 18, 1886). An appeal can be taken from defended judgments within the time specified in article 443 and the following of the Code of Civil Procedure.

In case of a judgment by default the time only begins to run from the day the default can no longer be opened.

In case of appeal, the action is heard at an ordinary sitting and as an urgent case.

A cross action can be brought on appeal, without being considered as a new case.

The time to appeal to the Court of Cassation runs from the day of personal service upon the party for defended decrees, and from the day the default can no longer be opened for all decrees by default.

(Law of February 6, 1893). Such an appeal in cases of divorce and of separation from bed and board operates as a stay.

Art. 249. (Law of April 18, 1886). A judgment or decree on appeal ordering a divorce cannot be assented to (*Law of December* 9, 1922) unless it has been brought to change a separation from bed and board into a divorce.

Art. 250. (Law of December 19, 1929). An extract of the judgment or decree on appeal pronouncing the divorce shall be published on the

notice boards placed in the halls of the Civil Tribunal and the Tribunal of Commerce.

A similar extract shall be inserted in one of the newspapers published at the place where the Tribunal sits, or if there are none, in one of those published in the department.

Art. 251. (Law of April 18, 1886). The enacting part of the judgment or decree on appeal shall be transcribed in the registers of Civil Status of the place where the marriage has been celebrated.

An entry shall be made in the margin of the record of marriage mentioning the judgment or decree on appeal in accordance with article 49 of the Civil Code. If the marriage has been celebrated abroad, a transcription thereof shall be made in the registers of Civil Status of the place where the husband and wife had their last domicile; and an entry shall be made in the margin of the record of marriage, if it has been transcribed in France.

Art. 252. (Law of June 26, 1919). The transcription is made in the name of the party who has obtained the divorce and at the instigation of his solicitor, under penalty of a fine of 100 francs for the latter.

For that purpose, the decision shall be served, within fifteen days from the date upon which it has become final, upon the qualified officer of Civil Status, in order that it may be transcribed in the registers. Upon such service, the certificates mentioned in article 548 of the Civil Code of Procedure shall be added and also if there has been a decree on appeal a certificate that no further appeal has been taken.

In case of dismissal of an appeal taken to the

highest Court from a decree on appeal granting a divorce, the clerk of the Court of Cassation must, within a month after the second decree is given, forward an extract of the same to the solicitor of the party who has obtained the final decision granting the divorce. The time prescribed for the demand that the transcription be made only begins to run, in that case, from the receipt by the solicitor of the extract of the decree of dismissal.

The transcription is made within five days after the demand exclusive of holidays by the officer of Civil Status, subject to the penalties specified in article 50 of the Civil Code.

If the solicitor of the party who has obtained the divorce fails to serve the notice within fifteen days, the other party has the right to serve such notice and to apply to have the transcription made.

A judgment or decree on appeal which has become final extends back, as to its effects regarding the property of the husband and wife, to the day of the complaint: but it only operates as against third parties from the day of the transcription.

Art. 253. (Law of March 26, 1924). The enacting part of the judgment or decree on appeal granting a divorce must give the date of the order specified in articles 236 of the present Code and 878 of the Code of Civil Procedure.

Articles 254 to 274 were repealed by the Law of April 18, 1886.

Art. 254. The parties may make either personally or by their attorneys such observations or put such questions to the witnesses as they may deem proper,

but they cannot interrupt them during their depositions.

Art. 255. *Each deposition shall be taken down in writing as also all statements and remarks which it has occasioned. The official report of the examination shall be read to the witnesses as well as to the parties: all of them shall be requested to sign and it shall be stated whether they have signed or whether they have declared that they could not or would not sign.*

Art. 256. *After the close of the two examinations or the examination of the plaintiff, and if the defendant has not produced any witnesses, the Tribunal orders that the parties shall be heard at a public sitting of which it fixes the day and hour: it directs that the papers in the proceedings shall be submitted to the Public Prosecutor and appoints a Judge to make a report. Such order shall be served upon the defendant at the instigation of the plaintiff, within the time therein specified.*

Art. 257. *Upon the day named for the final judgment the Judge appointed shall submit his report: the parties may thereafter either personally or by their attorneys present such observations as they may deem useful in the case : thereafter the Public Prosecutor presents his findings.*

Art. 258. *The final judgment is given publicly; when it grants the divorce, the plaintiff shall be authorized to go before the officer of Civil Status to have it pronounced.*

Art. 259. *When the action for divorce has been*

brought for violence, cruelty or gross insults, the Judges may, even if the grievances are sufficient, refuse to grant the divorce immediately. In such a case, before granting the relief they shall authorize the wife to leave her husband without being obliged to receive him, if she chooses; and they shall order the husband to pay her alimony in proportion to his means, if the wife has not herself a sufficient income to provide for her wants.

Art. 260. *After a test of one year, if the parties have not come together again, the plaintiff, husband or wife, can have the other cited to appear before the Tribunal within the time specified by law to hear the Court give its final judgment, which shall then grant the divorce.*

Art. 261. *When the divorce is applied for on the ground that the husband or wife has been sentenced to a degrading corporal punishment the only formalities to be complied with shall be to present to the Tribunal of First Instance a duly certified copy of the decision containing the sentence, with a certificate of the clerk of the Court establishing that the decision can no longer be modified by ordinary legal means. The certificate of the clerk must be certified by the Attorney-General or the Republic's Attorney.*

Art. 262. *In case of appeal from the judgment granting the plea or from the final judgment given by the Tribunal of First Instance in a divorce suit, the case shall be prosecuted and decided by the Imperial Court* (Court of Appeals) *as an urgent cause.*

Art. 263. *An appeal shall not be receivable unless it has been made within two months from the day of the service of the judgment, when the defendant has appeared or when the judgment has been granted by default. The time to appeal to the Court of "Cassation" from a final judgment shall also be two months from the service. The appeal shall act as a stay.*

Art. 264. *In consequence of any judgment granting a divorce which has been given by the highest Court or has become final, the husband or wife who has obtained it shall be obliged to appear within a period of two months before the officer of civil status to have the divorce pronounced, the other party having been duly cited.*

Art. 265. *Such two months shall only begin to run against judgments in the first instance after the expiration of the time to appeal; against decrees on appeal rendered by default, after the expiration of the time to open the default; and against final judgments, when the defendant has appeared, after the expiration of the time for an appeal to the Court of "Cassation".*

Art. 266. *The husband or wife who is the plaintiff and who has allowed the period of two months above referred to elapse without summoning the other before the Officer of Civil Status, shall lose the benefit of the judgment obtained and shall only be able to begin another action for divorce for a new cause: in such case, however, former causes may be brought forward by him.*

Section II.

Of the Provisional Measures which an Action of Divorce may give rise to.

Art. 267. *The provisional custody of the children shall belong to the husband whether plaintiff or defendant, in a divorce case, unless the Tribunal makes a different order at the request, either of the mother or of the family, or of the Public Prosecutor, for the greater benefit of the children.*

Art. 268. *The wife, whether plaintiff or defendant in a divorce suit may leave the domicile of her husband during the proceedings, and ask for alimony in proportion to the means of the husband. The Tribunal designates the house where the wife shall be obliged to reside and fixes, if necessary, the alimony which the husband shall be obliged to pay to her.*

Art. 269. *The wife shall be obliged to prove that she has resided in the house designated, whenever she may be called upon so to do : if she fails to make such proof the husband can refuse to pay the alimony, and if the wife is the plaintiff in the divorce suit, he can ask that it be decided that she shall not be entitled to continue the proceedings.*

Art. 270. *The wife, whether plaintiff or defendant in a divorce suit, whose property is in common, can at all stages of the case, from the date of the order specified in article* 238, *ask that seals be affixed upon the property of the community for the protection of her rights. Such seals shall only be removed when an inventory with appraisal is taken and the husband shall be obliged to produce the things which*

have been inventoried or to answer for their value as legal custodian.

Art. 271. *Any obligation contracted by the husband for account of the community, any conveyance of real estate forming part thereof which he has made after the date of the order mentioned in article* 238 *shall be declared void, if it is also established that the same has been made or contracted for the purpose of defrauding the wife of her rights.*

Section III.

Of Exceptions in Actions for Divorce.

Art. 272. *An action for divorce shall come to an end by the reconciliation of the husband and wife which has taken place, either since the facts which might have given the right to maintain such action have occurred or since the action for divorce has been brought.*

Art. 273. *In either case, it shall be decided that the plaintiff is not entitled to maintain his action: he may nevertheless bring a new action for a cause which has arisen since the reconciliation; and he can then make use of the former causes, in support of his new action.*

Art. 274. *If a plaintiff in a divorce suit denies that there has been a reconciliation, the defendant shall have to prove it, either by writings or by witnesses in the manner prescribed in the first section of the present chapter.*

Chapter III.

Of Divorce by Mutual Consent.

Articles 275 to 294 were repealed by the Law of July 27, 1884.

Art. 275. The mutual consent of the husband and wife shall not be sufficient if the husband is less than twenty-five years of age, or if the wife is a minor of less than twenty-one years.

Art. 276. Mutual consent shall only be sufficient after two years of marriage.

Art. 277. It shall no longer be sufficient after twenty years of marriage, nor when the wife is forty-five years of age.

Art. 278. The mutual consent of the husband and wife shall never be sufficient if it is not authorized by their fathers and mothers or by their other living ascendants, according to the rules specified in article 150 of the title "Of Marriage".

Art. 279. The husband and wife who are determined to obtain a divorce by mutual consent shall be obliged previously thereto to make an inventory and appraisal of all their property, personal and real, and to adjust their respective rights, as to which nevertheless they are free to compromise.

Art. 280. They shall likewise be obliged to state in writing what they have agreed, as to the three following points: 1°) To whom the children born of their marriage shall be confided, either during the time of the test or after the divorce is pronounced;

2°) *To which house the wife shall retire to reside during the time of the test;* 3°) *What sum the husband shall pay to the wife during such time, if she has not sufficient means to provide for her wants.*

Art. 281. *The husband and wife shall present themselves together and personally before the Civil Tribunal of their district or before the Judge acting as such, and shall make a declaration of their intention, in the presence of two notaries brought by them.*

Art. 282. *The Judge shall make to the husband and wife together and to each of them separately, in the presence of the two notaries, such representations and recommendations as he shall deem proper. He shall read to them chapter IV of the present title which regulates the effects of divorces and shall explain to them all the consequences of the step they have taken.*

Art. 283. *If the husband and wife persist in their determination, the Judge shall record that they seek a divorce and mutually consent thereto; and they shall be obliged to produce and to deposit immediately in the hands of the notaries, in addition to the instruments mentioned in articles* 279 *and* 280 *:*

1°) *Their records of birth and marriage;*

2°) *The records of birth and death of all the children born of their marriage;*

3°) *The official declaration of their father and mother or other living ascendants stating that for reasons known to them they authorize so and so, their son or daughter, grandson or granddaughter married to so and so to apply for a divorce and to consent thereto. The fathers and mothers, grandfathers and*

grandmothers of the husband and wife are presumed to be living, until the records establishing their death have been presented.

Art. 284. *The notaries shall draw up a full official report of everything that has been said and done in compliance with the foregoing articles: the original shall remain with the older of the two notaries, as also the papers produced, which shall be annexed to the official report in which shall be mentioned the notification given to the wife to retire within twenty-four hours to the house agreed upon by her and her husband and to reside there until the divorce is pronounced.*

Art. 285. *The declaration thus made shall be renewed by observing the same formalities in the first fortnight of each of the fourth, seventh and tenth month thereafter. The parties shall be obliged each time to prove, by an official instrument, that their fathers and mothers or other living ascendants persist in their first determination, but they shall not be called upon to renew the production of any other instrument.*

Art. 286. *Within a fortnight after the day upon which the year from the first declaration has elapsed the husband and wife, each attended by two friends who shall be well known in the district, of the age of fifty years at least, shall appear together and personally before the Presiding Judge of the Tribunal or the Judge acting as such: they shall deliver to him the certified copies in due form of the four official reports containing their mutual consent and of all the instruments which have been annexed thereto, and each of them separately, but in the presence of each other and*

of the four well known persons, shall request the Magistrate to grant the divorce.

Art. 287. *After the Judge and persons present have made their observations to the husband and wife, their request and the delivery made by them of the papers in support thereof, if they persist in their intention, shall be recorded for their benefit: the clerk of the Court shall draw up an official report which shall be signed as well by the parties (unless they declare that they cannot or will not sign, in which case that fact shall be mentioned) as by the four attending persons, the Judge and the clerk.*

Art. 288. *The Judge shall at once add at the end of the official report his order to the effect, that within three days, the whole matter shall be referred by him to the Tribunal, sitting in the Judges' Chambers, with the written findings of the Public Prosecutor to whom the papers must be submitted by the clerk of the Court for that purpose.*

Art. 289. *If the Public Prosecutor finds proof in the papers that the husband was twenty-five years of age and the wife twenty-one years when they made their first declaration; that at that time they had been married for two years; that the marriage did not date further back than twenty years; that the wife was less than forty-five years; that the mutual consent has been expressed four times during the course of the year after the preliminaries hereabove specified and with all the formalities prescribed by the present chapter, especially with the consent of the fathers and mothers of the husband and wife or of the other ascendants living, in case of the death of the fathers and mothers, he shall give his findings in these terms:*

"The law allows": *should it be otherwise the findings shall be in these terms:* "The law prevents".

Art. 290. *The Tribunal, upon such proceeding, shall not be authorized to look into other matters than those mentioned in the foregoing article. If the result thereof in the opinion of the Tribunal is that the parties have complied with the conditions and fulfilled the formalities required by law, it shall grant the divorce and shall send the parties before the officer of Civil Status to have it pronounced; should it be otherwise, the Tribunal shall declare that the divorce shall not be granted and shall give the reasons of its decision.*

Art. 291. *The appeal from a judgment deciding that a divorce should not be granted shall only be receivable if it has been taken by both parties and nevertheless by separate notices, within ten days at the earliest and not later than twenty days after the date of the judgment of first instance.*

Art. 292. *The notices of appeal shall be served reciprocally upon the husband and wife and upon the Public Prosecutor of the Tribunal of First Instance.*

Art. 293. *Within ten days after service upon him of the second notice of appeal, the Public Prosecutor of the Tribunal of First Instance shall forward to the Attorney General of the Imperial Court of Appeals a certified copy of the judgment and the other papers upon which he has acted. The Attorney General of the Imperial Court of Appeals shall give his findings in writing within the ten days following the receipt of the papers: the President or the Judge acting in his stead shall make his report to the Imperial Court of*

Appeals sitting in the Judges' Chambers and the final decision shall be taken within ten days after the findings of the Attorney General have been given.

Art. 294. By virtue of the decree granting the divorce and within twenty days after such date, the parties shall present themselves together and personally before the officer of Civil Status to have the divorce pronounced. After the expiration of such period, the judgment shall cease to produce effect.

Chapter III.

Of Effects of Divorce.

Art. 295. (Law of March 26, 1924). The husband and wife who are divorced can no more be reunited, if subsequently to the divorce one of them has contracted a new marriage, followed by a second divorce, unless there are children living or legitimate issue of the first marriage, or unless the husband or wife by the second marriage has died subsequently to the divorce.

If the husband and wife are reunited a new celebration of the marriage shall be necessary, and they shall not be entitled to adopt a matrimonial system different from the one which originally governed their relations.

Art. 296. (Law of February 4, 1928). A divorced wife shall be able to remarry immediately after the transcription of the judgment or decree on appeal which has granted the divorce, provided however, three hundred days have elapsed since the order

referred to in article 236 of the present Code has been granted in the action which has brought about the divorce.

Such period expires in case of confinement since the transcription of the judgment or decree on appeal granting the divorce.

If the husband dies before the judgment or decree on appeal granting the divorce has become final, the widow may remarry as soon as three hundred days have elapsed since the order referred to in paragraph 1 of the present article has been made.

Art. 297. (Law of July 13, 1907). When a judgment for separation from bed and board has been converted into a judgment for divorce, in accordance with article 310 of the Civil Code, the divorced wife may contract a new marriage immediately after the conversion so granted has been transcribed.

Art. 298. (*Repealed by law of December* 15, 1904). *In case of a divorce granted by the Court on account of adultery, the guilty party shall never be able to marry his or her accomplice.*

Art. 299. (Law of July 27, 1884). The husband or wife against whom a divorce has been pronounced, shall lose all the advantages which the other had made in his or her favor either by marriage contract or since the marriage.

(Law of February 6th, 1893). In consequence of the divorce, the husband and wife shall each resume the use of his or her name.

Art. 300. The husband or wife who has obtained the divorce shall retain the advantages made in his

or her favor by the other, even if it has been agreed that they were reciprocal and if the reciprocity does not take place.

Art. 301. If the husband and wife have not made to each other any advantages, or if the same do not appear to be sufficient to secure the maintenance of the husband or wife who has obtained the divorce, the Tribunal may grant alimony to such husband or wife, which shall not exceed one third of the income of the other. Such alimony can be revoked if it ceases to be necessary.

Art. 302. The children shall be confided to the husband or wife who has obtained the divorce, unless the Tribunal at the request of the family or of the Public Prosecutor orders for the greater benefit of the children that all or some of them should be placed under the care of the other spouse, or of a third party. Civ. C. 203 et seq., 372 et seq.

Art. 303. Whoever may be the person to whom the children are confided, the father and mother shall respectively retain the right to superintend the maintenance and the education of their children, to which they shall be obliged to contribute in proportion to their means.

Art. 304. The dissolution of the marriage by a divorce granted in Court shall not deprive the children born of such marriage of any of the advantages which they derive from the law, or from the matrimonial agreements of their father and mother; but the rights of the children shall only take effect in the same manner and under the same circumstances as if there had been no divorce.

Art. 305. (Repealed by Law of July 27, 1884). *In case of divorce by mutual consent, the ownership of one half of the property of the husband and wife shall belong, as a matter of right, from the day of their first declaration to the children born of their marriage: the father and mother shall nevertheless retain the enjoyment of such half until their children come of age, on condition of providing for their support, maintenance and education in accordance with their fortune and standing, all of which shall be without prejudice to the other advantages which may have been secured to the said children by the matrimonial agreements of their father and mother.*

Chapter IV.

Of Separation from Bed and Board.

Art. 306. (Law of July 27, 1884). If an action for divorce can be instituted, the husband or wife is at liberty to apply for a separation from bed and board.

(Law of February 4, 1928). If the husband dies during the pendency of an action for separation from bed and board or after the separation has been pronounced, the widow may remarry as soon as three hundred days have elapsed since the order referred to in article 878 of the Code of Civil Procedure has been granted.

Art. 307. (Law of April 18, 1886). The suit for such separation shall be brought, conducted, and passed upon in the same manner as any other civil action; nevertheless articles 236 to 244 shall apply; it cannot

be effected by the mutual consent of the husband and wife.

The guardian of a person lawfully interdicted can, with the consent of the family council, present a petition and prosecute an action for separation.

Art. 308. (Law of July 14, 1909). Article 247 of the Civil Code applies in proceedings for separation from bed and board.

Art. 309. (Law of March 26, 1924). The enacting part of the judgment or decree on appeal granting a separation from bed and board shall mention the date of the order specified in article 878 of the Code of Civil Procedure.

Art. 310. (Law of June 6, 1908). When a separation from bed and board has lasted for three years, the judgment can as a matter of fact be converted into a judgment for divorce upon an application made by the husband or wife.

The costs resulting from such application shall be borne by the husband or wife, even when plaintiff, against whom the separation has been pronounced, and they shall be halved between them if the separation has been pronounced against each of them, by reason of reciprocal grievances.

The provisions of the judgment of separation from bed and board granting alimony to the husband or wife who has obtained the separation always remain effective.

(Law of July 27, 1884). Such new application shall be made by a complaint answerable in eight full days, by virtue of an order given by the Presiding Judge.

It shall be heard in Chambers.

The order shall appoint a Judge to make a report, shall direct that the papers are to be submitted to the Public Prosecutor, and shall fix a day for the appearance.

The judgment shall be given at a public sitting.

(Law of April 18, 1886). The case on appeal shall be argued and decided in Chambers upon the report, and after the Public Prosecutor has been heard. The decree shall be given in open Court.

Art. 311. (Law of February 6, 1893). A judgment granting a separation from bed and board, or a subsequent judgment, may forbid the wife to use her husband's name or authorize her to drop it. If the husband has added the name of his wife to his own, she may also ask that the husband should be forbidden to use it.

A separation from bed and board always occasions a separation of property.

It also produces the effect of restoring the wife to the full enjoyment of her civil capacity, without having to solicit the consent of her husband or of the Court.

If the separation from bed and board terminates by the reconciliation of the husband and wife, the capacity of the wife is henceforth changed, and is governed by the provisions of article 1449. Such change cannot be set up against third parties, unless the fact of the resumption of cohabitation has been established by an instrument executed in the presence of a notary of which the original is retained by him, and of which an extract shall be posted in the manner provided by article 1445, and also by an entry made in the margin: 1° of the record of marriage. 2° of

the judgment or decree on appeal, ordering the separation, and finally of the insertion of an extract in one of the newspapers of the department which publish legal notices.

TITLE SEVENTH.

Of Paternity and Filiation.

(Passed March 23, 1803; promulgated April 2nd 1803.)

Chapter I.

Of the Filiation of Legitimate Children, or of Those born in Wedlock.

Art. 312. A child conceived in wedlock has for father the husband.

Nevertheless the husband may repudiate the child, if he proves that during the time running from the three hundredth day to the one hundred and eightieth day before the birth of the child, it was physically impossible for him either on account of absence or owing to some accident to cohabit with his wife. Civ. C. 325, 725, 906.

Art. 313. A husband cannot repudiate a child by alleging his own impotency: he cannot repudiate him even on account of adultery, unless the birth has been concealed from him, in which case he is allowed to prove all facts tending to show that he is not the father.

(Law of April 18th 1886). In case of a judgment

or even of an action for divorce, or separation from bed and board, the husband may repudiate the child born three hundred days after the decision which has authorized the wife to have a separate domicile, or less than one hundred and eighty days since the final dismissal of the suit, or since the reconciliation. (Law of December 30, 1915). The presumption of paternity resulting from the foregoing article shall not apply to the child, even if he has not been repudiated, when he has been legitimated by a subsequent marriage of his mother in accordance with the provisions of article 331.

An action to repudiate a child cannot be maintained if, as a matter of fact, the husband and wife have been reunited.

Art. 314. A child born before the one hundred and eightieth day since the marriage cannot be repudiated by the husband in the following cases: 1° If he had knowledge of the pregnancy before the marriage; 2° If he was present when the record of birth was drawn up, and such record is signed by him, or contains his declaration that he does not know how to sign; 3° If it has been declared that the child cannot live. Civ. C. 56, 331 et seq., 725, 906.

Art. 315. The legitimacy of the child born three hundred days after the dissolution of the marriage may be contested. Civ. C. 227 et seq.

Art. 316. In the various cases in which the husband is authorized to repudiate, he must do so within one month, if he is at the place of birth of the child;

Within two months after his return if he was absent at that time.

Within two months after the discovery of the fraud, if the birth of the child has been concealed from him. Civ. C. 312 et seq., 325 et seq.

Art. 317. If the husband has died before entering his objection but still within the time to do so, the heir shall have two months to contest the legitimacy of the child, starting from the time when the child has gained possession of the property of the husband, or from the time when the child has contested the possession of the heirs. Civ. C. 316 et seq., 329 et seq., 724.

Art. 318. Any extra-judicial instrument containing a repudiation on the part of the husband, or his heirs, shall become void, if it is not followed within the period of one month, by an action at-law brought against a special guardian given to the child and in the presence of his mother.

Chapter II.

Of Proofs of Filiation of Legitimate Children.

Art. 319. The filiation of legitimate children is proved by the records of birth transcribed in the registers of Civil Status. Civ. C. 34 et seq., 55 et seq., 197, 1317 et seq., 1334.

Art. 320. In default of such a record, a continuous common repute of being a legitimate child is sufficient. Civ. C. 46, 195 et seq.

Art. 321. The status resulting from common

repute is established by a sufficient preponderance of facts, which indicate the connection of parent and child between an individual and the family to which he claims to belong.

The principal of such facts are :

That the individual has always borne the name of the father to whom he claims to belong;

That the father has treated him as his child, and as such has provided for his education, maintenance and establishment in life;

That the child has always been considered as such in the world;

That he has been considered as such by the family. Civ. C. 203.

Art. 322. No one can claim a status contrary to the one which his record of birth and general reputation in conformity therewith give him.

And reciprocally, no one can contest the status of a person who has a general reputation in conformity with his record of birth. Civ. C. 196.

Art. 323. In default of a record or of status resulting from continuous common repute or if the child has been registered under false names, or as being born of an unknown father or mother, proof of filiation may be made by witnesses.

Nevertheless such proof can only be received when there is incipiency of documentary evidence, or when the presumptions or indications resulting from unquestionable facts are sufficiently serious to admit the evidence. Civ. C. 46, 341, 1347, 1349, 1353.

Art. 324. The incipiency of documentary evidence results from family deeds, books and private papers

of the father and mother, official and even private documents, emanating from a party engaged in the controversy or who would have an interest therein, if alive. Civ. C. 1347.

Art. 325. Proof to the contrary may be made by all means of a nature to establish that the claimant is not the child of the person whom he pretends to be his mother, or even if the maternity is proved that he is not the child of the mother's husband. Civ. C. 312 et seq. 341.

Art. 326. The Civil Tribunals have exclusive jurisdiction to decide claims relating to parentage. Civ. C. 99 et seq., 195 et seq.

Art. 327. A criminal action for suppressing parentage can only be instituted after a final judgment on the question of such parentage. Civ. C. 52 et seq., 99 et seq.

Art. 328. An action to claim parentage is never outlawed as regards the child. Civ. C. 2226, 2262.

Art. 329. The action can only be brought by the heirs of the child who has made no claim, if he has died while a minor, or within five years after coming of age. Civ. C. 123, 317 et seq., 724.

Art. 330. The heirs can continue such action when it has been commenced by the child, unless he has formally discontinued it or has allowed three years to pass without any proceedings since taking the last legal step. Civ. C. 123, 317 et seq., 724.

Chapter III.

Of Natural Children.

Section I.

Of the Legitimation of Natural Children.

Art. 331. (Law of April 25, 1924). Children born out of wedlock other than those born of incestuous or adulterous intercourse are legitimated by the subsequent marriage of their father and mother, when the latter have lawfully acknowledged them before their marriage, or when they acknowledge them at the time of its celebration. In the latter case the officer of Civil Status who celebrates the marriage shall state in a separate instrument that the acknowledgment and legitimation have taken place.

Adulterous children are legitimated in the following cases by the subsequent marriage of their father and mother, when the same acknowledge them at the time of the celebration of the marriage, in the manner specified in the first paragraph of the present article:

1° Children born of the adulterous intercourse of the mother, when they are repudiated by the husband or his heirs.

2° Children born of the adulterous intercourse of the father and mother,when they are presumed to have been conceived at a time when the father or mother had a distinct domicile in consequence of an order granted in accordance with article 878 of the Code of Civil Procedure, and previously to a discontinuance of the action, to the dismissal of the complaint, or to a reconciliation lawfully established; nevertheless the acknowledgment and legitimation may be set aside if

the child enjoys the status of a legitimate child, by common repute.

3°. Children born of the adulterous intercourse of the husband in all other cases, when there are no children or legitimate descendants born of the marriage during which the adulterous child has been conceived.

When a child referred to in the present article has been acknowledged by his father and mother, or one of them, subsquently to their marriage, such acknowledgment shall only confer legitimacy in consequence of a judgment given at a public hearing, after an examination and a trial in Chambers, and such judgments must show that the child has enjoyed the common repute of being their respective child, since the celebration of the marriage.

Every legitimation shall be entered in the margin of the record of birth of the legitimated child.

Such entry shall be made at the instigation of the officer of civil status who has celebrated the marriage if he knows that children exist, otherwise at the instigation of any interested party. Civ. C. 62, 201 et seq., 234 et sep., 756 et seq., 960, 962.

Art. 332. Legitimation can take place even in favor of deceased children who have left issue, and in such case it extends to the issue.

Art. 333. (Law of July 1st, 1922). Children legitimated by subsequent marriage enjoy the same rights as if they were born of such marriage.

(Repealed by Law of July 11, 1929). *The certified copy of the record of birth produced by the legitimated child to the Officer of Civil Status who is to celebrate his marriage shall comply with the*

requirements of the last paragraph of article 57 of the Civil Code, and shall mention that the child's father and mother are husband and wife. Civ. C. 312, 350, 731 et seq., 913 et seq., 960 et seq.

Section II.

Of Acknowledgments of Natural Children.

Art. 334. An acknowledgment of a natural child must be made in an official instrument when it has not been made in his record of birth. Civ. C. 62, 158 et seq., 161, 331, 338 et seq., 383, 756 et seq., 1317 et seq.

Art. 335. Such acknowledgment cannot take place in favor of children born of incestuous or adulterous intercourse (Law of December 13th, 1915), subject to the provisions of article 331. Civ. C. 158 et seq., 331, 342, 762 et seq.

Art. 336. An acknowledgment by the father, without indicating who the mother is, and without any admission on her part, only binds the father. Civ. C. 340, 341.

Art. 337. An acknowledgment made during the marriage by the husband of the wife in favor of a natural child whom he or she has had before the marriage of another person than the one he or she is married to, cannot affect the rights of the other spouse, nor those of the children of the marriage.

Nevertheless it shall produce effect after the dissolution of such marriage, if there are no surviving children born of the marriage. Civ. C. 227, 761.

Art. 338. A natural child who has been acknowledged can never claim the rights of a legitimate child.

The rights of natural children are regulated in the title "*Of Successions*". Civ. C. 158 et seq., 334, 383, 723 et seq., 756 et seq., 773, 908.

Art. 339. All acknowledgments on the part of the father or mother and also all claims on the part of the child, can be contested by all those who are interested in doing so.

Art. 340. (Law of November 16, 1912). Paternity outside of wedlock can be judicially declared:

1° In case of abduction or rape, when the time of the abduction or rape coincides with that of the conception;

2° In case of rape perpetrated owing to fraudulent pretences, abuse of authority, promise of marriage, or betrothal in case there is an incipiency of documentary evidence in the terms of article 1347;

3° If there are letters or other private writings emanating from the alleged father and constituting an unqualified avowal of paternity;

4° In case the alleged father and mother lived together in open concubinage during the legal period of the conception.

5° In case the alleged father has provided for or taken part in the maintenance and education of the child, as father.

An action to establish paternity shall not be receivable:

1° If it is proved that during the legal period of conception, the mother was notoriously a person of bad character, or had relations with another individual.

2° If either because the alleged father was away during the same period or on account of some accident

it was physically impossible for him to be the father of the child.

The action can only be brought by the child. During the minority of the child, the mother, even if she is a minor, is alone entitled to institute such action.

The action must be instituted within two years after the confinement, otherwise the right lapses.

Nevertheless in the cases specified in paragraphs 4 and 5 hereabove, the action may be brought after the expiration of two years following the cessation either of the concubinage or of the participation of the alleged father in the maintenance and education of the child.

In default of acknowledgment by the mother or if she is dead, interdicted or absent, the action shall be brought in accordance with the provisions of article 389.

If the action has not been brought during the minority of the child, he can institute it during the whole year after he comes of age. Civ. C. 342.

Art. 341. Proof of maternal descent is allowed.

A child who claims his mother shall be obliged to prove that he is the identical child born of such mother.

He shall only be allowed to make such proof, by witnesses, when there is incipiency of documentary evidence. Civ. C. 335, 1347.

Art. 342. A child shall never be allowed to prove paternal or maternal descent in cases in which an acknowledgment cannot take place in accordance with article 335. Civ. C. 335, 762.

TITLE EIGHTH.

Of Adoption.

(Law of June 19, 1923).

Art. 343. Adoption can only take place when there are serious reasons therefor, and if it presents advantages for the adopted person. Civ. C. 363.

Art. 344. Adoption is only permitted to persons of either sex, over forty years of age, and who at the time of the adoption have no children, nor legitimate descendants, and who are at least fifteen years older than the individuals they propose to adopt. Civ. C. 363.

Art. 345. A French person can adopt an alien, or be adopted by him.

Adoption does not occasion a change of the nationality of the adopted person.

Art. 346. No one can be adopted by several persons, unless they are husband and wife.

Art. 347. A husband or wife can only adopt, or be adopted, with the consent of the other, unless he or she is unable to express his or her wish, or unless there is a separation from bed and board between the husband and wife.

Art. 348. If the person who is to be adopted is a minor, and still has his father and mother, both of them must consent to the adoption. If one of them is dead, or unable to express his wish, the consent of the other is sufficient.

If the father and mother are divorced, or separated from bed and board, the consent of the one in whose

favor the divorce or separation from bed and board has been pronounced and who has the custody of the child is sufficient.

Art. 349. In the cases provided in the foregoing article, the consent shall be given in the deed of adoption itself, or in a separate official document before a notary or a Justice of the Peace of the domicile or residence of the ascendant, or in a foreign country before the French diplomatic or consular agents.

Art. 350. If the minor has no father or mother, or if they are unable to express their wish, the consent is given by the family council.

It shall likewise be so if the person is a natural child who has not been acknowledged, or, who after being acknowledged, has lost his father or mother, or if they are unable to express their wish.

Art. 351. The adoption confers the name of the adopter upon the adopted, by adding it to the family name of the latter. If the adopter and adopted have the same family name, no change is made in the name of the adopted.

If the adopted is a natural child, who has not been acknowledged, the name of the adopter may be given to him, in the deed of adoption itself, and by consent of the parties, without being added to his own name.

Art. 352. The adopted remains in his natural family, and retains all his rights. Nevertheless the adopter possesses alone the rights derived from paternal authority towards the adopted, and also the right to consent to the marriage of the adopted. (Law of July 17, 1927). In case of disagreement between

the husband and wife who adopt such disagreement implies consent to the marriage of the adopted.

In case of interdiction, of disappearance judicially established, or of death of the adopter, having occurred during the minority of the adopted, paternal authority belongs by right to the descendants of the former.

Art. 353. The relationship resulting from adoption extends to the legitimate children of the adopted.

Art. 354. Marriage is prohibited:

Between the adopter, the adopted and his issue:

Between the adopted and the husband or wife of the adopter; and reciprocally between the adopter and the husband or wife of the adopted;

Between the adopted children of the same person;

Between the adopted and the children which may be born to the adopter. Civ. C. 161, 162, 184.

Art. 355. Nevertheless the prohibitions contained in the foregoing article regarding marriages between the adopted children of the same person, and between the adopted and the children born to the adopter may be removed by decree for serious reasons.

Art. 356. The adopted owes nourishment to the adopter, if he is in need, and reciprocally the adopter owes nourishment to the adopted.

The obligation to furnish nourishment continues to exist between the adopted and his father and mother. However the father and mother of the adopted are only obliged to furnish him nourishment if he cannot obtain it from the adopter. Civ. C. 203, 208 et seq.

Art. 357. The adopted and his lawful issue acquire no rights by succession to the property of the parents

of the adopter. However they have the same rights to the succession of the adopter as his issue or legitimate descendants might have. Civ. C. 312, 731, 739 et seq., 913 et seq., 940.

Art. 358. If the adopted dies without lawful issue the things given by the adopter or which have come from his estate, and which exist in kind at the time of the adopted's decease, revert to the adopter or to his descendants, on condition of contributing to the payment of the debts and without prejudice to the rights of third parties.

The surplus of the property of the adopted belongs to his own parents who always exclude all the heirs of the adopter, except his descendants even as regards the things specified in the present article. Civ. C. 732, 747, 766.

Art. 359. If during the life time of the adopter, and after the death of the adopted, the children or descendants left by the latter, die without issue, the adopter is entitled to the things which he has given as is stated in the foregoing article; but this right belongs to the adopter personally, and does not extend to his heirs, even in the direct descending line. Civ. C. 732, 747.

Art. 360. The person who intends to adopt, and the one who wishes to be adopted, when the latter is of full age, or even if a minor but over sixteen years of age, must present themselves before the Justice of the Peace of the domicile of the adopter, or before a notary to execute the deed containing their respective consents.

If the minor is less than sixteen years of age, the

deed is executed in his name, by his legal representative.

Art. 361. In the cases specified in article 93 of the present Code, the deed is drawn up by an official of the intendancy or an officer of the commissariat.

The official of the intendancy or the officer of the commissariat who has attended to the execution of the deed of adoption, shall forward a certified copy thereof to the Minister of War, or to the Minister of the Navy, as soon as possible, who shall transmit it to the District Attorney.

Art. 362. The deed of adoption must be confirmed by the Civil Tribunal of the domicile of the adopter.

The Tribunal acquires jurisdiction by a petition of the solicitor of the party who applies first and a certified copy of the deed of adoption shall be annexed thereto.

Art. 363. The Tribunal sitting in Chambers, after having obtained proper information verifies: 1° If all the conditions prescribed by law have been fulfilled; 2° If there are serious reasons in favor of the adoption, and if such adoption offers advantages to the adopted. Civ. C. 343 et seq.

Art. 364. After hearing the District Attorney, and without following any rules of procedure, the Tribunal, without giving any reasons, declares that the adoption shall be or shall not be.

In the first case the enacting part of the judgment shall contain the recitals prescribed in article 858 of the Code of Civil Procedure.

Art. 365. If confirmation is refused, each of the parties may, within two months after the judgment,

submit the same to the Court of Appeals, which examines the case in the same manner as the Tribunal of First Instance, and decides without giving any reasons, that the judgment is confirmed or that it is reversed; in consequence of which the adoption shall or shall not take place.

In case of confirmation, the Public Prosecutor may appeal: the decree on appeal shall be given in the manner above set forth.

If the decree on appeal decides that the adoption shall take place, it shall contain the recitals specified in article 858 of the Code of Civil Procedure.

An appeal to the Court of Cassation on the ground of errors in the decree dismissing the application for confirmation, is receivable.

Art. 366. The judgment or decree on appeal granting an adoption is given in open Court. It is posted on the principal door of the Hall of the Tribunal or Court of Appeals. It is published in the newspaper containing legal notices of the place where the adopter has his domicile.

Art. 367. Within three months the enacting part of the judgment or decree on appeal is transcribed in the registers of Civil Status of the place of birth of the adopted, upon the application of the solicitor who has obtained the judgment, or of one of the interested parties. If the adopted was born in a foreign country the transcription is made in the registers of the City Hall of the 1st district in Paris.

The transcription shall be made forthwith at the time of the application, and after service upon the officer of civil status, in accordance with article 858 of the Code of Civil Procedure.

The solicitor who has obtained the judgment is obliged to have the transcription made within the time above specified, under penalty of a fine of one hundred francs, without prejudice to damages.

The adoption shall be mentioned in the margin of the record of birth of the adopted. Civ. C. 40, 102.

Art. 368. The adoption only produces effect as regards the parties from the time of the judgment or decree on appeal confirming it. The parties are bound, as soon as the deed of adoption is executed.

The adoption cannot be set up against third parties until the judgment or decree on appeal of confirmation has been transcribed.

Art. 369. If the adopter happens to die after the deed showing his desire to establish a relationship of adoption is executed, and after the petition to confirm the adoption has been presented to the Civil Tribunal, the proceedings shall continue, and the adoption can be granted, if proper.

The heirs of the adopter may, if they deem that the adoption should not be granted, present to the District Attorney, all briefs and arguments to that effect. Civ. C. 724.

Art. 370. The revocation of the adoption may be pronounced by the Tribunal upon the petition of the adopter or adopted, if advisable for very serious reasons.

The judgment of the Tribunal is always subject to appeal.

A revocation puts an end to all the effects of the adoption in the future.

The provisions of articles 366 and 367 apply to

the judgment or decree on appeal which pronounces the revocation of the adoption.

The law of July 24, 1889 amended by the law of November 15, 1921 relating to the protection of children maltreated or morally abandoned applies to adopted children and the adopter can be deprived of all or part of the powers of paternal authority, under the conditions specified in such law.

TITLE NINTH

Of Paternal Authority.

(Passed March 24, 1803; promulgated April 3, 1803.)

Art. 371. A child at all ages owes honor and respect to his father and mother. Civ. C. 148, 153, 1388.

Art. 372. He remains under their authority until he comes of age or is emancipated. Civ. C. 148, 267, 302, 346, 383, 416, 488, 1384.

Art. 373. The father exercises such authority alone during the marriage. Civ. C. 141, 267, 507.

Art. 374. A child cannot leave his father's house without the latter's consent, unless it is to enlist voluntarily, after he has reached the full age of eighteen years. Civ. C. 108.

Art. 375. A father, who for very serious reasons is dissatisfied with the conduct of a child, shall have the following means of correcting him. Civ. C. 383, 468.

Art. 376. If the child has not yet entered his

sixteenth year, the father can have him incarcerated for a period not exceeding one month: and for that purpose the President of the Tribunal of the district shall, upon his request, issue an order of arrest.

Art. 377. After the child has entered his sixteenth year, and until he comes of age, or is emancipated, the father can only ask that his child be incarcerated for six months, at the utmost: he shall apply to the President of said Tribunal, who after having conferred with the King's Attorney (*Republic's Attorney*) shall issue an order of arrest, or refuse, and may, in the former case, reduce the time of incarceration asked for by the father.

Art. 378. In either case, there shall be no writings and no proceedings in Court, with the exception of the order of arrest itself, in which the reasons shall not be stated.

The father shall only be obliged to sign an undertaking to pay all expenses and furnish proper maintenance. Civ. C. 203.

Art. 379. The father is always at liberty to reduce the time of detention ordered or applied for by him. If, after his liberation, the child again falls back into bad habits, a new incarceration may be ordered in the manner specified in the foregoing articles. Civ. C. 376, 377.

Art. 380. If the father has remarried, he shall be obliged to comply with article 377, in order to have a child born of his first marriage incarcerated, even if the child is under sixteen years of age.

Art. 381. The surviving mother, who has not remarried, can only have a child incarcerated with the

assistance of the two nearest relatives on the father's side, and after making an application in the form prescribed by article 377.

Art. 382. When the child has personal property, or when he has a trade, his incarceration can only take place upon an application in the manner prescribed in article 377, even if the child is less than sixteen years of age

A child who is incarcerated, can address a brief to the Attorney General of the Royal Court (*Court of Appeals*). Such Attorney General shall make inquiries through the King's Attorney (*Republic's Attorney*) of the Tribunal of First Instance, and shall make his report to the President of the Royal Court (*Court of Appeals*) who, after giving notice to the father, and after having gathered full information can revoke or amend the order given by the President of the Tribunal of First Instance.

Art. 383. (Law of July 2, 1907). Paternal authority over natural children legally acknowledged is exercised by the father or mother who has first acknowledged them: in case of simultaneous acknowledgment by the father and mother, the father exercises alone the powers derived from paternal authority: in case a parent to whom paternal authority belongs predeceases the other, it passes to the survivor who exercises it, is a matter of right.

However the Tribunal may if the interest of the child requires it, confide paternal authority to the parent who is not entitled to it by law.

Subject to these reserves, and to what is stated in article 389, of the administration of property, paternal authority over natural children is regulated

in the same manner as in case of legitimate children. Civ. C. 334 et seq.

Art. 384. The father during the marriage, and after its dissolution, the surviving father or mother shall have the enjoyment of the property of their children, until the same reach the full age of eighteen years, or until their emancipation, if it has taken place before the age of eighteen years.

(Law of July 2, 1907). The father or mother who exercises paternal authority shall have the legal enjoyment of the property of the child lawfully acknowledged, under the same conditions as the lawful father and mother, subject to what is stated in article 389. Civ. C. 227, 389, 453, 476 et seq., 578, 579, 601, 739, 1442.

Art. 385. The obligations of such enjoyment shall be:

1° Those to which usufructuaries are bound.

2° To feed, maintain and educate the children in accordance with their fortune.

3° To pay the arrears or interest on the capital.

4° To pay the funeral expenses and those of the last illness. Civ. C. 203, 600 et seq., 618, 2101.

Art. 386. (Law of February 21, 1906). The father and mother against whom a divorce has been pronounced, shall not be entitled to such enjoyment. Civ. C. 302, 303.

Art. 387. It shall not extend over the property which the children may acquire by their work or in a separate business, nor over property given or bequeathed, on the express condition that the father and mother shall not have the enjoyment thereof. Civ. C. 894, 895, 1134.

TITLE TENTH.

Of Minority, Guardianship and Emancipation.

(Passed March 26, 1803; promulgated April 5, 1803.)

Chapter I.

Of Minority.

Art. 388. A minor is a person of either sex, who has not yet reached the full age of twenty-one years. Civ. C. 37, 108, 141, 224, 345, 346, 372, 442, 488, 903, 904, 907, 942, 980, 1030, 1095, 1124 et seq., 1305 et seq., 1990, 2121, 2252.

Chapter II.

Of Guardianship.

Section I.

Of the Guardianship of the Father and Mother.

Art. 389. (Law of April 6th 1910). The father is during the lifetime of the husband and wife the legal administrator of the property of their children who are under age, and are not emancipated, with the exception of what may have been given or bequeathed to them on the express condition of being administered by a third party.

When the father is deprived of the administration, the mother becomes the administratrix in his place and stead, as a matter of right, with the same powers, and she does not require his marital authorization.

In case of divorce or separation from bed and board, the administration belongs to the husband or wife to whom the custody of the children has been given, unless it has been otherwise ordered.

In case of conflicting interests between the administrator and the minor, a special administrator shall be given to the latter, by the Tribunal in Chambers, upon a notice of motion, and after hearing the District Attorney. It shall be done likewise, if the father and mother are deprived of the legal administration although alive, subject to the provisions of the law of July 24, 1889, in case the husband or wife are both deprived of paternal authority.

The legal administrator shall act as a prudent father, and is responsible for his administration according to the terms of common law.

He performs alone the acts which a guardian is entitled to perform alone, or with the consent of the family council, and requires the authorization of the Tribunal, trying the case as above set forth, for the acts which a guardian cannot perform without such authorization.

He is, however, obliged as a careful administrator to invest the capital belonging to the minor, when it exceeds 1,500 francs, and he shall have the personal property represented by securities to bearer belonging to the child converted into registered securities, unless owing to their nature, or owing to an agreement the securities are not susceptible of being thus converted, and without third parties being called upon to see that such investments or conversions are made.

Articles 457, 458, 460, 461 in fine, 462, 466, 467 last paragraph of the Civil Code, 953, and the fol-

lowing of Book II, title VI of the Code of Civil Procedure, 2, 3, 10 and 11 of the law of February 27, 1880, apply to the legal administration with the modifications providing that no family council nor guardianship, nor assistant guardianship are required.

Legal administration ceases as a matter of right to belong to any person who has a judicial adviser, or who is considered absent, or who has been deprived of paternal authority: it can be withdrawn for serious reasons by the Tribunal trying the case as is stated in paragraph 4, upon the application of the father or mother to whom it does not belong, of a parent or parent-in-law of the child, or of the Public Prosecutor.

The administrator is accountable for the property and income of which he has not the enjoyment, and for the property only of which the law gives him the usufruct.

Articles 469, 471, 472, 473, 474 and 475 of the Civil Code apply to the account which he is obliged to render.

(Law of July 2, 1907). The natural parent to whom paternal authority belongs, shall, however, only manage the property of his child under age, as his legal guardian, and under the supervision of an assistant guardian whom he must have appointed within three months, after he has assumed such duties, or who shall be appointed judicially in accordance with the provisions of the following paragraph: he shall only be entitled to legal enjoyment from the time of the nomination of the assistant guardian, if it has not been made within the time above specified.

The duties belonging to the family council of lawful children are exercised as to natural children,

by the Tribunal of First Instance of the place of the legal domicile of the parent, to whom the guardianship belongs at the time he acknowledged the child, and by the Tribunal of the place of residence of the child, if he has not been acknowledged: the Tribunal tries the case in Chambers after the father and mother have been heard or summoned, if the child has been acknowledged, or upon the application of one of them, or upon the application of the Public Prosecutor or of its own accord and passes upon all questions relating to the organization, or the supervision of the guardianship of said minors.

Subject to these reserves, and with the exception of articles 394 and from 402 to 416, all the provisions of the present title, apply to the guardianship of natural children under age.

The provisions and legal exemptions specified in article 12, paragraph 2, of the Fiscal Law of January 26, 1892 , relating to the guardianship of lawful children, and interdicted persons, shall apply to the deeds and judgments required for the organization, and supervision of the guardianship of natural children. Civ. C. 159, 384.

Art. 390. After the dissolution of the marriage caused by the natural or civil death of the husband or wife, the guardianship of the children who are under age and not emancipated belongs as a matter of right to the survivor of the father or mother. Civ. C. 141 et seq., 227, 421, 476 et seq.

Art. 391. The father neverthless may appoint a special adviser to the surviving mother as guardian, without whose advice she cannot take any steps in connection with the guardianship.

If the father specifies the purposes for which the adviser is appointed, the guardian shall be able to act without his assistance in all other matters.

Art. 392. Such appointment of an adviser can only be made in one of the following ways:

1° By a last will.

2° By a declaration made either before a Justice of the Peace, attended by his clerk, or before notaries. Civ. C. 969 et seq.

Art. 393. If a wife is pregnant at the time of the husband's death a curator ad ventrem shall be appointed by the family council.

The mother becomes the guardian upon the birth of the child, and the curator becomes by right the assistant guardian. Civ. C. 315, 405 et seq., 420 et seq.

Art. 394. The mother is not obliged to accept the guardianship; nevertheless, if she refuses it, she must fulfil the duties thereof until she has had a guardian appointed. Civ. C. 405 et seq.

Art. 395. (Law of March 20, 1917). If the mother who is guardian wishes to remarry, she must call together the family council before the celebration of the marriage, and such council shall decide whether she may retain the guardianship.

If she fails to do so, she loses the guardianship as a matter of right, and her husband shall be responsible for the consequences of her having unduly retained the guardianship.

The same obligation is imposed with like consequences, upon a woman acting as guardian who is not the mother, if she marries or remarries. Civ. C. 228, 406 et seq., 1200 et seq.

Art. 396. (Law of March 20, 1917). When the family council duly called together maintains the mother or the woman who is not the mother as guardian, it shall necessarily appoint the husband as co-guardian, and he becomes jointly responsible with his wife for the administration subsequently to the marriage.

In case of death, interdiction, or detention of the husband, of divorce or separation from bed and board, the guardian shall continue in such capacity: the co-guardianship shall cease. Civ. C. 450 et seq., 1200 et seq., 2121.

Section II.

Of the Guardianship conferred by a Father or Mother.

Art. 397. (Law of March 20, 1917). The individual right to select a male or female guardian, whether he or she is a relative or even a stranger, only belongs to the last survivor of the father or mother. Civ. C. 421.

Art. 398. Such right can only be made use of in the manner provided by article 392, and under the following exceptions and restrictions. Civ. C. 969 et seq.

Art. 399. (Law of March 20, 1917). A mother who remarries and who is not maintained as guardian of the children of her first marriage cannot select their guardian, whether male of female. Civ. C. 395.

Art. 400. (Law of March 20, 1917). When a mother who remarries and is maintained as guardian has selected a male or female guardian for the children of her first marriage, such selection shall only be

valid if it is confirmed by the family council. Civ. C. 395, 406 et seq.

Art. 401. A guardian appointed by the father or mother is not obliged to accept the guardianship, unless he belongs to the class of persons, upon whom in the absence of such special appointment, the family council might have conferred the guardianship. Civ. C. 427 et seq., 432 et seq.

Section III.

Of the Guardianship of Ascendants.

Art. 402. (Law of March 20, 1917). When no male or female guardian has been selected for a minor by the survivor of the father or mother, the guardianship belongs, as a matter of right, to the grandfather or grandmother, who is in the closest degree. Civ. C. 142, 397, 421, 735 et seq. 907.

Art. 403. (Law of March 20, 1917). In case of equality between grandfathers and grandmothers of the same degree, the family council selects the male or female guardian, without taking into account the side to which he or she belongs.

Art. 404. If the same equality exists between two great grandparents in the maternal line, the appointment shall be made by the family council, which nevertheless can only select one of these two ancestors. Civ. C. 405 et seq.

Section IV.

Of Guardianship conferred by the Family Council.

Art. 405. (Law of March 20, 1917). When a child who is a minor and is not emancipated remains

without a father or mother, or a male or female guardian appointed by his father or mother, or ascendants, and likewise when the male or female guardian comes under one of the causes of exclusion hereafter referred to, the appointment of the male or female guardian shall be made by the family council.

A married woman must obtain the consent of her husband. He will necessarily be the co-guardian. Civ. C. 390 et seq., 397 et seq., 402 et sep., 427 et seq., 442 et seq., 476 et seq.

Art. 406. Such family council shall be called together at the request and upon the application of the relatives of the minor, of his creditors or of other interested parties, or even by the Justice of the Peace of the minor's domicile, of his own accord, and upon his own application. Any person may notify the Justice of the Peace of the facts necessitating the appointment of a guardian.

Art. 407. (Law of March 20, 1917). A family council shall be composed, in addition to the Justice of the Peace, of six blood relatives, or connections by marriage of either sex, chosen as well in the county, where the guardianship is constituted as within a distance of two myriametres: of whom half shall belong to the paternal side and half to the maternal side, following the order of proximity in each line.

The husband and the wife cannot belong together to the same family council. Preference shall be given to the one in the closest degree of relationship. In case they are both in the same degree, the older shall be preferred. Civ. C. 110, 427 et seq., 442 et seq., 735 et seq.

Art. 408. (Law of March 20, 1917). Brothers or sisters of whole blood of the minor are alone excepted from the limitation in number specified in the foregoing article: if there are six or more of them, they shall all be members of the family council, which shall be composed of them alone, together with the widows in the ascendant line, and the ascendants duly excused, if there are any.

If their number is less, the other relatives are only called to complete the council. Civ. C. 442.

Art. 409. When blood relatives, or connections by marriage in either line are not in sufficient number on the spot, or within the distance designated by article 407, the Justice of the Peace shall apply to blood relatives or connections by marriage, domiciled at a greater distance, or even to citizens of the county known to have had continuous relations of friendship with the minor's father or mother.

Art. 410. The Justice of the Peace may, even if there is a sufficient number of blood relatives or connections by marriage, on the spot, allow citations to be issued to blood relatives or connections by marriage, who are of a closer degree or of the same degree as the blood relatives or connections by marriage present, at whatever distance they are domiciled: this, however, shall be done by excluding some of the latter, and so that the number specified in the foregoing articles shall not be exceeded.

Art. 411. The time to appear upon a given date shall be fixed by the Justice of the Peace, but so that there shall always be between the service of the citation and the day appointed for the meeting of the family council an interval of three days at least, when

all the parties cited reside in the county, or within the distance of two myriametres.

Whenever certain of the parties cited are domiciled beyond that distance, the time shall be increased by at least one day for each three myriametres.

Art. 412. (Law of March 20, 1917). Blood relatives, connections by marriage or friends so cited, shall be obliged to appear in person, or to be represented by a special attorney.

An attorney in fact cannot represent more than one person.

A husband may represent his wife and vice versa. The attorney must produce a power in writing, without cost. Civ. C. 1984 et seq.

Art. 413. Any blood relative, connection by marriage or friend who has been cited and who, without proper excuse, does not appear shall be subject to a fine, which shall not exceed 50 francs, and which shall be imposed by the Justice of the Peace without appeal. Civ. C. 407.

Art. 414. When a sufficient excuse is given and it appears proper either to wait for an absent member or to replace him, then in such case as well as in any other if it seems advisable in the interest of the minor, the Justice of the Peace may adjourn the meeting or postpone it.

Art. 415. The meeting shall be held, as a matter of right at the office of the Justice of Peace, unless he himself designates another place. The presence of three-fourths at least of the members cited shall be necessary to deliberate.

Art. 416. The family council shall be presided

over by the Justice of the Peace, who has a deliberative vote, or a casting vote, in case of equality of votes.

Art. 417. When a minor domiciled in France owns property in the colonies or vice versa, the special administration of such property shall be given to a co-guardian.

In such case the guardian and co-guardian shall be independent and not responsible to one another for their respective management. Civ. C. 450 et seq., 2121.

Art. 418. A guardian shall act and manage the property in such capacity from the day of his appointment, if it has taken place in his presence; otherwise from the day upon which notice thereof has been given to him. Civ. C. 450 et seq., 2121, 2135.

Art. 419. Guardianship is a personal duty which does not descend to the heirs of the guardian. Such heirs are only responsible for the management of the person from whom they take; and if they are of full age they are obliged to continue such management until a new guardian has been appointed.

Section V.

Of Assistant Guardians.

Art. 420. (Law of March 20, 1917). In every case of guardianship, there shall be an assistant male or female guardian.

A woman can be appointed assistant guardian with the authorization of her husband. Civ. C. 361 et seq. 390 et seq., 397 et seq., 402 et sq., 405 et seq., 448, 458 et seq., 470, 505, 1442, 2137 et seq., 2142.

Art. 421. When the duties of guardian are conferred upon a person of one of the classes mentioned in sections I, II and III of the present chapter, such guardian, before assuming his duties, shall call together a meeting of the family council, composed as is stated in section IV, to appoint an assistant guardian.

If the guardian has interfered with the management before this formality has been complied with, the family council called together either at the request of the relatives, the creditors or other interested parties, or by the Justice of the Peace of his own accord, may, in case of fraud on the part of the guardian, deprive him of the guardianship without prejudice to any indemnity which may be due to the minor. Civ. C. 406 et seq., 446 et seq., 1116, 1149, 1382.

Art. 422. In all other guardianships, the appointment of the assistant guardian shall take place immediately after the guardian is appointed. Civ. C. 405 et seq.

Art. 423. The guardian shall never vote upon the appointment of the assistant guardian, who, except in the case of brothers of whole blood, shall be chosen in the line to which the guardian does not belong. Civ. C. 733, 735 et seq.

Art. 424. An assistant guardian shall not, as a matter of right, take the place of the guardian in case of vacancy or if the guardianship is abandoned owing to absence; but in such case he must have a new guardian appointed and otherwise he shall be liable for any damage the minor may suffer. Civ. C. 406 et seq., 448, 1149.

Art. 425. The duties of assistant guardian shall cease at the same time as the guardianship. Civ. C. 476 et seq., 488, 512.

Art. 426. The provisions contained in sections VI and VII of the present chapter shall apply to assistant guardians.

Nevertheless, a guardian cannot apply for the dismissal of an assistant guardian, nor can he vote at a family council called for that purpose. Civ. C. 427 et seq., 442 et seq.

Section VI.

Of Causes exempting from Guardianship.

Art. 427. Are exempt from acting as guardians:

The persons mentioned in titles III, V, VI, VIII, IX, X, and XI of the Act of May 18, 1804.

The Presidents and Justices of the Court of "Cassation," the Attorney General and the Assistant Attorneys General of the same Court;

The Prefects;

All citizens holding a public office in a district other than the one in which the guardianship is constituted.

Art. 428. (Law of March 20, 1917). Are also exempt from acting as guardians: soldiers in active service and all other citizens performing a mission for the President of the Republic outside the territory of the Republic.

Women who are not willing to act as such.

Art. 429. If the mission is not official and is contested, the dispensation shall only be granted after the claimant has produced a certificate of the Minister from whose department the mission invoked as an excuse emanates.

Art. 430. Citizens of the kind mentioned in the foregoing articles who have accepted to be guardians subsequently to their filling an office or being in a service or being sent upon missions which exempt them therefrom, shall not be allowed to be discharged on that account.

Art. 431. Those, on the contrary, upon whom the said office, service or missions have been conferred subsequently to their acceptance and assuming the management of a guardianship may, if they do not wish to remain guardians, cause a meeting of the family council to be called, within one month, to have somebody replace them.

If, at the expiration of the office, service or mission, the new guardian asks to be discharged, or should the former guardian apply to be reinstated, the family council may again confer the guardianship upon him. Civ. C. 406 et seq.

Art. 432. No citizen who is not a blood relative or a connection by marriage can be compelled to accept to be guardian, unless there are no blood relatives or connections by marriage able to assume the guardianship, within a distance of four myriametres. Civ. C. 401.

Art. 433. Any individual of the full age of sixty-five years can refuse to be guardian. Any one who has been appointed before that age can ask to be relieved of the guardianship, when he reaches the age of seventy years.

Art. 434. Any individual suffering from a serious infirmity, duly established, is exempted from being guardian.

He may even be discharged if such infirmity has developed since his appointment.

Art. 435. Two guardianships are a valid excuse for any person not accepting a third one.

A person, who being a husband or a father, has already been intrusted with one guardianship, cannot be compelled to accept a second one, excepting that of his children. Civ. C. 506.

Art. 436. Those who have five legitimate children are exempt from assuming any other guardianships, excepting those of the said children.

Children who have died in active service in the armies of the King (*of the Republic*) shall always count to entitle a person to such exemption.

The other children who have died shall only be counted if they have themselves left children then alive. Civ. C. 739 et seq.

Art. 437. The birth of children during the guardianship does not authorize the guardian to resign.

Art. 438. If the guardian appointed is present at the meeting which confers the guardianship upon him, he must immediately present his objections, and the family council shall pass upon them, otherwise any subsequent objections on his part shall be rejected.

Art. 439. If the guardian appointed was not present at the meeting which has conferred the guardianship upon him, he can ask that the family council should meet for the purpose of considering his objections.

The proceedings on his part for that purpose shall be taken within three days from the time he has been notified of his appointment: such period shall be increased by one day for each distance of three myria-

metres from the place of his domicile to the place where the guardianship is constituted; after that time he is debarred. Civ. C. 406 et seq., 427 et seq.

Art. 440. If his objections are rejected he can apply to the Courts to have them admitted; but the shall be obliged to act temporarily, during the litigation. Civ. C. 394, 450 et seq., 1372 et seq.

Art. 441. If he succeeds in being exempted from assuming the guardianship, those who have rejected the objections may be ordered to pay the costs of the proceedings.

If he fails, he shall be ordered to pay them himself.

Section VII.

Of Incapacity, Exclusions and Dismissals from Guardianship.

Art. 442. (Law of March 20, 1917). The following persons cannot be guardians or members of a family council:

1° Minors, excepting the father or mother;

2° Those who have been interdicted;

3° All those who are, or whose father or mother are, engaged in a lawsuit with the minor, in which the status of such minor, his fortune or a considerable part of his property are involved. Civ. C. 388, 489, 495, 507.

Art. 443. A conviction to a degrading corporal punishment occasions, as a matter of right, exclusion from a guardianship. It occasions also the dismissal in case of a guardianship previously conferred. Civ. C. 23, 25.

Art. 444. The following persons are also excluded

from being guardians, and can even be removed if they act in such capacity.

1° Those whose conduct is notoriously bad;

2° Those whose management evidences incapacity or a breach of trust. Civ. C. 513.

Art. 445. Every individual who has been excluded or removed from a guardianship cannot be a member of a family council.

Art. 446. Whenever there is occasion for removal from a guardianship, it shall be ordered by the family council called together upon the application of the assistant guardian or by the Justice of the Peace of his own accord.

The latter cannot refuse to convene the meeting, when a formal demand has been made by one or more blood relatives or connections by marriage of the minor, of the degree of first cousins or of a closer degree. Civ. C. 406 et seq. 420 et seq. 735 et seq.

Art. 447. All resolutions of the family council pronouncing the exclusion or the removal of the guardian shall state the reasons therefor, and shall only be taken after the guardian has been cited or heard.

Art. 448. If the guardian assents to the resolution, it shall be so stated, and the new guardian shall at once enter upon his duties.

If he objects, the assistant guardian shall apply to the Tribunal of First Instance to have the resolution confirmed, and the Tribunal shall give its decision, subject to an appeal.

A guardian who has been excluded or dismissed may in that case sue the assistant guardian, for the

purpose of obtaining a decision to be maintained as guardian. Civ. C. 350 et seq. 420.

Art. 449. The blood relatives or connections by marriage who have asked that the meeting be called may become parties to the suit, which shall be conducted and tried as an urgent case.

Section VIII.

Of the Guardian's Administration.

Art. 450. A guardian shall have the care of the person of the minor and shall represent him in all civil acts.

He shall administer his property as a prudent father and shall be responsible for all damages resulting from his bad management.

He cannot purchase the property of the minor, nor lease it, unless the family council has authorized the assistant guardian to grant him a lease : he cannot accept the assignment of any rights of or claims against his ward. Civ. C. 108, 371 et seq., 417 et seq., 907, 1149, 1250, 1596, 1689, 1718, 1991, 2121, 2135, 2141 et seq.

Art. 451. Within ten days after his appointment has become known to him, the guardian shall apply for the removal of the seals, if they have been affixed, and shall immediately cause the inventory of the minor's property to be made, in the presence of the assistant guardian.

If anything is due to him by the minor, he must declare it in the inventory in answer to the question which the public officer is obliged to put to him and which shall be mentioned in the official report: otherwise he shall forfeit his claim. Civ. C. 421, 438.

Art. 452. Within one month after the closing of the inventory, the guardian shall have all the personal property, with the exception of those which the family council has authorized him to keep in kind, sold in the presence of the assistant guardian at a public sale conducted by a public officer and after giving notices and making publications, to which the official report of the sale shall refer. Civ. C. 527 et seq., 805, 1063.

Art. 453. Fathers and mothers, during the time they have the personal and lawful enjoyment of the property of the minor, are not obliged to sell the chattels, if they prefer to keep them and return them in kind.

In such case, they shall cause an estimate to be made at their just value and at their own expense by an expert who shall be named by the assistant guardian and shall be sworn in the presence of the Justice of the Peace. They shall pay the appraised value of the articles which they may not be able to return in kind. Civ. C. 384 et seq., 589.

Art. 454. At the time every guardian other than a father and mother begins his duties, the family council shall determine upon an estimate and according to the importance of the property administered, the amount which the yearly expenses of the minor and those of the administration of his property may reach.

The same instrument shall specify whether the guardian is authorized to have one or more special and paid managers acting under his responsibility, to assist him in his management. Civ. C. 407 et seq., 1374, 1384, 1994.

Art. 455. Such family council shall decide positively over what fixed amount the guardian shall be obliged to invest the surplus of the income in excess of the expenses : such investment must be made within a period of six months, after which the guardian shall owe interest, if he has failed to invest. Civ. C. 1153 et seq., 1907.

Art. 456. If the guardian has failed to make the family council specify the amount above which he must begin to invest, he shall owe interest on all sums not invested however small they may be, after the expiration of the period mentioned in the foregoing article. Civ. C. 1153, 1907.

Art. 457. A guardian, even if he or she is the father or mother, cannot borrow for account of the minor, nor convey or mortgage his real estate, without being authorized by a family council.

Such authorization shall only be granted in case of absolute necessity or of evident advantage.

In the first case the family council shall only grant its consent, after it has been established by a summary account presented by the guardian that the ready money, the movables and the income of the minor are insufficient.

The family council shall, in all cases, indicate the pieces of real estate which shall first be sold, and all the conditions which it may deem useful. Civ. C. 407 et seq., 509, 517, 529, 1125, 1304 et seq., 1559, 1596, 1702, 2126.

Art. 458. The decisions of the family council relating to that subject shall only be carried out after the guardian has applied for and has obtained the approval of the Tribunal of First Instance, which shall

give its decision in Chambers, and after hearing the King's Attorney (*Republic's Attorney*). Civ. C. 509.

Art. 459. The sale shall take place publicly, in the presence of the assistant guardian, at auction and shall be conducted by a member of the Tribunal of First Instance or a notary appointed for that purpose, and after three notices have been posted at the usual places, in the district, for three consecutive Sundays.

Each one of these notices shall be stamped and authenticated by the Mayor of the county in which it has been posted. Civ. C. 509, 1596.

Art. 460. The formalities required by articles 457 and 458 for the conveyance of property of a minor do not apply in case a judgment has ordered a public sale, upon the application of a joint owner.

However, in that case, the public sale shall only take place in the manner specified in the foregoing article: outsiders shall necessarily be admitted. Civ. C. 822 et seq. 1686 et seq.

Art. 461. A guardian cannot accept or refuse a succession accruing to the minor without the previous consent of the family council.

The acceptance shall only be made under benefit of inventory. Civ. C. 776 et seq., 784 et seq., 792 et seq. 843.

Art. 462. In case the succession refused in the name of the minor has not been accepted by any one else, it can be retaken, either by the guardian, duly authorized by a new resolution of the family council, or by the minor, if he has come of age, but only in the condition in which it is at the time it is retaken, and the sales and other acts which have lawfully taken place cannot be attacked. Civ. C. 790, 2252.

Art. 463. A donation made to a minor can only be accepted by the guardian with the consent of the family council.

It shall produce the same effect with respect to a minor as regards a person of full age. Civ. C. 894, 935 et seq., 1125.

Art. 464. No guardian can institute a suit relating to the rights of a minor to real estate, nor acquiesce in an action relating to the same rights, without the consent of the family council. Civ. C. 1125, 1304 et seq.

Art. 465. (Law of December 15, 1921). A guardian shall require the same consent to institute a partition suit, but he may, without such consent, appear in a partition suit brought against the minor or intervene in a collective proceeding started by all the interested parties, in conformity with the provisions of article 822, to effect a partition. Civ. C. 815 et seq., 838.

Art. 466. In order to produce, with respect to the minor, the same full effect as between persons of full age, a division must be conducted before a Court, and previously thereto, an appraisal must be made by experts appointed by the Tribunal of First Instance of the place where the succession becomes open.

The experts, after taking the oath in the presence of the President of the same Tribunal, or of any other Judge delegated by him, to perform their duties well and faithfully, shall divide the estates and make up the lots which shall be drawn in the presence either of a member of the Tribunal or of a notary appointed by him and the notary shall distribute the lots.

Any other division shall be considered as merely provisional. Civ. C. 110; 815 et seq., 819 et seq., 824 et seq., 834, 840, 1314.

Art. 467. A guardian can only compromise in the name of the minor after being authorized by the family council and with the advice of three jurists chosen by the King's Attorney (*Republic's Attorney*) of the Tribunal of First Instance.

The compromise shall only be valid if it has been confirmed by the Tribunal of First Instance, after hearing the King's Attorney (*Republic's Attorney*). Civ. C. 2044 et seq.

Art. 468. A guardian who has serious reasons for being dissatisfied with the minor's conduct, may present his grievances to the family council, and if he is authorized by the same, he may apply to have the minor incarcerated, in accordance with what is specified in this connection in the title *of Paternal Authority*. Civ. C. 375 et seq., 407 et seq.

Section IX.

Of Guardianship Accounts.

Art. 469. Every guardian is accountable for his administration when it comes to an end. Civ. C. 480, 488, 509, 2121, 2135 et seq.

Art. 470. Any guardian who is not the father or mother may be compelled, even during the guardianship, to furnish to the assistant guardian statements of account of his administration at times which the family council may have thought proper to specify; nevertheless, the guardian cannot be compelled to furnish more than one in each year.

These statements of account shall be prepared and

furnished without charge on unstamped paper and without any legal formality. Civ. C. 407 et seq. 420.

Art. 471. The final account of the guardian shall be furnished at the minor's expense, when he has come of age or has obtained his emancipation. The guardian shall advance the expense thereof.

The guardian shall be allowed all expenses sufficiently warranted and made for a useful purpose. Civ. C. 488.

Art. 472. Any agreement entered into between the guardian and the minor who has come of age shall be void, unless a detailed account has previously been rendered and proper vouchers have been furnished: all of which shall be established by a receipt from the one to whom the account has been rendered ten days at least before the agreement. Civ. C. 907, 2044 et seq.

Art. 473. If the account gives rise to a controversy, it shall be prosecuted and adjusted in the same way as other controversies in civil matters.

Art. 474. The sum to which the balance due by the guardian may amount, shall bear interest, without demand, from the day of the closing of the accounting.

The interest which may be due to the guardian by the minor shall only begin to run from the day a demand to pay has been made after the closing of the accounting. Civ. C. 1153, 1907.

Art. 475. All causes of action in favor of the minor against his guardian relating to guardianship matters, are outlawed at the end of ten years, from the time such minor has come of age. Civ. C. 488, 2262, 2264.

Chapter III.

Of Emancipation.

Art. 476. A minor is emancipated as a matter of right by his marriage. Civ. C. 144; 485 et seq., 1388, 1398, 2208.

Art. 477. A minor, even unmarried, can be emancipated by his father, or in default of his father by his mother, when he has reached the full age of fifteen years.

Such emancipation takes place upon the sole declaration of the father or mother, received by the Justice of the Peace attended by his clerk.

Art. 478. A minor who remains without a father or mother, can also be emancipated, but only at the full age of eighteen years, if the family council deems that he is worthy of it.

In such case the emancipation results from the resolution authorizing it and from the declaration which the Justice of the Peace, as President of the family council, has made in the same instrument *to the effect that the minor is emancipated.* Civ. C. 407 et seq., 485.

Art. 479. When a guardian has not taken any steps for the emancipation of the minor, as stated in the foregoing article, and when one or more blood relatives or connections by marriage of the minor of the degree of first cousin or of closer degree deem that he is worthy of being emancipated, they can petition the Justice of the Peace to convene the family council to decide thereon.

The Justice of the Peace must comply with such request. Civ. C. 406 et seq., 735 et seq.

Art. 480. (Law of March 20, 1917). The guardian's account shall be rendered to the emancipated minor, assisted by a male or female curator, who shall be appointed by the family council.

If the female curator is married, she must obtain the authorization of her husband. Civ. C. 406 et seq. 471.

Art. 481. An emancipated minor can execute leases, of which the duration does not exceed nine years; he can receive his income, can give discharges therefor, and can perform all acts of pure administration, without having the right to rescind these acts, if no such right exists in favor of a person of full age. Civ. C. 499, 513, 838 et seq., 935 et seq., 1305 et seq., 1429 et seq., 1718, 1990, 2206.

Art. 482. He cannot institute an action relating to real estate, nor appear in such an action, nor receive or give a discharge for capital composed of personal property, without the assistance of his curator; who, in the latter case, shall oversee that the capital received is invested. Civ. C. 526, 838 et seq., 935 et seq., 1030, 1304 et seq.

Art. 483. An emancipated minor cannot borrow for any cause whatever without a resolution of the family council, confirmed by the Tribunal of First Instance, after the King's Attorney (*Republic's Attorney*) has been heard. Civ. C. 407 et seq., 499, 513, 1124 et seq., 1305 et seq.

Art. 484. Nor can he sell or convey his real estate or perform any acts other than those of pure

administration, without following the rules laid down for a minor not emancipated.

As regards the oligations which he has assumed owing to purchases or otherwise, they may be reduced if they are excessive: for that purpose the Tribunal shall take into account the minor's fortune, the good or bad faith of the persons who have dealt with him, the usefulness or uselessness of the expenses. Civ. C. 457 et seq., 461 et seq., 903 et seq., 1095 et seq., 1305 et seq., 1990.

Art. 485. Every emancipated minor whose obligations have been reduced, in accordance with the foregoing article may be deprived of the benefit of emancipation, which shall be withdrawn, by complying with the same formalities as were followed when it was conferred. Civ. C. 477 et seq.

Art. 486. A minor shall be replaced under guardianship from the day upon which the emancipation has been revoked, and shall so remain until he comes of full age. Civ. C. 390 et seq., 488.

Art. 487. An emancipated minor who has a trade is considered as being of age, with respect to the matters relating to such trade. Civ. C. 1308.

TITLE ELEVENTH.

Of Majority, Interdiction, and Judicial Adviser.

(Passed March 29, 1803. Promulgated April 8, 1803.)

Chapter I.

Of Majority.

Art. 488. Majority takes place at the full age of twenty-one years; at that age, one can perform all the acts of civil life, subject to the restrictions specified in the title *Of Marriage*. Civ. C. 109, 148, 151 et seq., 346, 371, 377, 389, 471 et seq., 475, 487, 489, 783, 819, 933, 1013.

Chapter II.

Of Interdiction.

Art. 489. A person of full age who is habitually in a state of imbecility, insanity or madness, shall be interdicted, even if his condition presents lucid moments. Civ. C. 512, 901, 1124, 1125.

Art. 490. Any relative is entitled to apply for the interdiction of his relative. In like manner, all married persons may do the same with regard to each other.

Art. 491. In case of madness, if the interdiction is not applied for by the husband or wife or the relatives, the King's Attorney (*Republic's Attorney*) must do so, and in cases of imbecility or insanity, he

can also do so when a person has no husband or wife or known relatives.

Art. 492. All proceedings for interdiction shall be brought before the Tribunal of First Instance.

Art. 493. Acts of imbecility, insanity or madness shall be stated in writing. Those who apply for the interdiction shall produce the witnesses and papers.

Art. 494. The Tribunal shall order the family council, constituted in the manner specified in section IV of chapter II of the title of *Minority, Guardianship and Emancipation*, to give its opinion on the condition of the person whose interdiction is sought. Civ. C. 407 et seq.

Art. 495. Those who have applied for the interdiction cannot form part of the family council; nevertheless, the husband or wife and the children of the person whose interdiction is sought may be admitted without being entitled to vote. Civ. C. 407 et seq., 442 et seq., 507.

Art. 496. After having received the decision of the family council, the Tribunal shall examine the defendant in the Judges' Chamber; if he cannot appear, he shall be examined at his home by one of the Judges appointed for that purpose, attended by his clerk. In all cases, the King's Attorney (*Republic's Attorney*) shall be present at the examination.

Art. 497. After the first examination, the Tribunal shall, if necessary, appoint a temporary administrator to look after the person and the property of the defendant. Civ. C. 112, 113.

Art. 498. A judgment upon an application for interdiction can only be given in open Court, after the parties have been heard or summoned.

Art. 499. If the Tribunal rejects the application for interdiction, it can, nevertheless, if the circumstances require it, order that the defendant shall no longer be allowed to sue, compromise, borrow, receive any capital composed of personal property, or give discharges therefor, convey or mortgage his property, without the assistance of an adviser who shall be appointed by the same judgment. Civ. C. 481 et seq., 501 et seq., 513 et seq., 2045, 2115, 2126.

Art. 500. In case of appeal from a judgment given in the first instance, the Royal Court, (*Court of Appeals*) may, if it deems necessary, examine once more the person whose interdiction is applied for, or have him examined by a commissioner.

Art. 501. All decrees on appeal or judgments ordering an interdiction or the appointment of an adviser shall upon the application of the plaintiffs, be entered, served upon the parties, and recorded, within ten days, in the notices which must be posted in the Court Hall and in the offices of the notaries of the district.

(Law of March 16, 1893). A short extract of the judgment or decree shall also be forwarded by the solicitor who has obtained it to the clerk's office of the Tribunal of the defendant's place of birth, within one month from the time the decision has acquired the effect of an adjudication. Such extract shall be entered by the clerk of the Court, within a period of fifteen days in a special register, which is open to all and of which copies can be obtained. The clerk of the Court shall, within a further period of fifteen days, forward to the solicitor a certificate showing that such requirement has been fulfilled.

In case of individuals born abroad, the decisions shall be entered in the same manner, and within the same time, in a register kept in the clerk's office of the Tribunal of the Seine: such register shall also mention the decisions relating to persons born in the French colonies, independently of the register which shall be kept in the clerk's office of the place of their origin.

Any violation of the foregoing provisions committed by the clerks of the Courts or the solicitors shall be punished by a fine of fifty francs, without prejudice to all damages. Civ. C. 513, 1124.

Art. 502. An interdiction or the appointment of an adviser shall produce effect from the day of the judgment. All acts performed subsequently by the interdicted person or without the assistance of the adviser shall be void, as a matter of right. Civ. C. 513, 901, 1028, 1124, 1304 et seq., 2003.

Art. 503. Acts performed previously to the interdiction can be annulled, if it is notorious that the cause of interdiction existed at the time such acts were performed. Civ. C. 1108 et seq.

Art 504. After the death of an individual, the acts performed by him can only be attacked on account of insanity, if his interdiction had been pronounced or applied for before his death; unless the proof of insanity results from the act itself which is attacked. Civ. C. 901, 1108 et seq.

Art. 505. If no appeal has been taken from the judgment of first instance ordering the interdiction, or if such judgment is confirmed on appeal, the appointment of a guardian and of an assistant guardian for the interdicted person shall be made according to

the rules laid down in the title *Of Minority, Guardianship and Emancipation.* The temporary administrator shall cease to act and shall render his account to the guardian, if he is not himself the guardian. Civ. C. 405 et seq., 420 et seq., 469 et seq.

Art. 506. A husband is, as a matter of right, the guardian of his interdicted wife.

Ar. 507. A wife can be appointed the guardian of her husband. In that case the family council shall regulate the form and conditions of the administration, but the wife who considers that she has been wronged by the decision of the family council. can seek redress before the Courts. Civ. C. 407 et seq., 442, 450 et seq., 495.

Art. 508. With the exception of the husband or wife, the ascendants and descendants, no one shall be compelled to retain the guardianship of an interdicted person more than ten years. At the expiration of that time the guardian may apply to be and is entitled to be replaced. Civ. C. 427 et seq., 469 et seq.

Art. 509. An interdicted person stands in the same position as a minor, with respect to his person and property: the laws relating to guardianships of minors shall apply to guardianships of interdicted persons. Civ. C. 108, 450 et seq., 1304 et seq., 2121, 2135.

Art. 510. The income of an interdicted person must be specially used to improve his condition and hasten his recovery.

The family council may direct that he be taken care of at his residence, or be placed in an asylum, or even in a hospital, according to the symptoms of

his illness and the importance of his fortune. Civ. C. 407 et seq., 454.

Art. 511. When the marriage of a child of an interdicted person is contemplated, the settlement or contribution from his estate, or other matrimonial agreements, shall be fixed in accordance with the opinion of the family council, confirmed by the Tribunal, upon the findings of the King's Attorney (*Republic's Attorney*). Civ. C. 1081 et seq., 1091 et seq., 1095 et seq., 1387.

Art. 512. Interdiction ceases with the causes which have occasioned it : nevertheless, its withdrawal shall only be pronounced by following the rules laid down to obtain an interdiction, and the interdicted person can only resume the use of his rights, after a judgment ordering its withdrawal. Civ. C. 489 et seq.

Chapter III.

Of Judicial Adviser.

Art. 513. Spendthrifts can be forbidden to sue, compromise, borrow, receive any capital composed of personal property, give discharges therefor, convey or mortgage their property , without the assistance of an adviser who shall be appointed by the Tribunal. Civ. C. 499 et seq., 1028, 1124, 1940, 2044 et seq., 2126.

Art. 514. Prohibition to act without the assistance of an adviser may be applied for by those who have the right to ask for a person's interdiction; their application shall be prosecuted and determined in the same manner.

Such prohibition can only be withdrawn by following the same rules. Civ. C. 490 et seq.

Art. 515. No judgment in matters of interdiction or appointment of an adviser shall be given either at first instance or on appeal, without hearing the opinion of the Public Prosecutor.

BOOK SECOND.

OF PROPERTY, AND OF DIFFERENT KINDS OF OWNERSHIP.

TITLE FIRST.

Of Different Kinds of Property.

(Passed January 25, 1804. Promulgated February 4, 1804.)

Art. 516. All property is either personal or real. Civ. C. 517 et seq., 525 et seq.

Chapter I.

Of Real Estate.

Art. 517. Property is real estate either by its nature or by its destination, or by the object to which it aplies. Civ. C. 518 et seq., 522 et seq., 526, 2118, 2133.

Art. 518. Lands and buildings are real estate by their nature. Civ. C. 536, 664, 1711.

Art. 519. Windmills or water-mills constructed on pillars and forming part of a building are also real estate by nature. Civ. C. 531.

Art. 520. Crops standing on roots and the fruit of trees not yet gathered are also real estate.

As soon as the crops are cut and the fruit gathered, even if not yet taken away, they become personal property.

If only a part of the crop is cut, this part alone becomes personal property. Civ. C. 548, 583, 1401, 1571, 1771, 2102.

Art. 521. The usual cutting of underwood or of timber divided into sections to be cut, only becomes personal property as the trees are cut down. Civ. C. 528, 590, 593, 1403.

Art. 522. Animals which the owner of the land delivers to the farmer or small farmers for its cultivation, whether they are appraised or not, are supposed to be real estate so long as they remain on the land, owing to an agreement.

Animals leased to others than farmers or small farmers are personal property. Civ. C. 527 et seq., 564, 1064, 1134, 1711, 1800 et seq.

Art. 523. Pipes used to bring water in a house or other hereditament are real estate and form part of the property to which they are attached.

Art. 524. The things which an owner of a piece of property has placed thereupon, for the use or cultivation of such property, are real estate by destination.

Thus, the following things are real estate by destination when they have been placed by the owner, for the use or cultivation of the property.

Animals used for farming purposes;

Agricultural implements;

Seeds given to farmers or settlers paying rent in kind;

Pigeons belonging to a pigeon-house;

Warren rabbits;

Beehives;

Fish in the ponds;

Wine presses, boilers, stills, vintage tubs and barrels;

The necessary implements for working ironworks, paper-mills and other factories ;

Straw and manure;

All personal articles which the owner has placed upon the property to remain there perpetually are also real estate by destination. Civ. C. 564, 1064.

Art. 525. An owner is supposed to have placed personal articles upon his estate to remain there perpetually, when they are fastened with plaster, mortar or cement, or when they cannot be removed without being broken or damaged, or without breaking or damaging the part of the property to which they are affixed.

Mirrors of an apartment are supposed to have been placed to remain perpetually, when the back to which they have been fastened forms part of the woodwork.

The same rule applies to pictures and other ornaments.

As to statues, they are real estate when they are placed in a recess made expressly to receive them, even if they can be removed without being broken or damaged. Civ. C. 524, 1349 et seq.

Art. 526. The following things are real estate on account of the object to which they apply:

The usufruct of immovable things;

Servitudes or land burdens;

All causes of action for the purpose of recovering real estate. Civ. C. 529 et seq., 578 et seq., 637 et seq., 2118.

Chapter II.

Of Personal Property.

Art. 527. Property is personal owing to its nature or by regulation of law. Civ. C. 2119, 2279.

Art. 528. Bodies which can move from one place to another, whether they move themselves, such as animals, or whether they cannot move without the assistance of extraneous power, such as inanimate things, are personal property by nature. Civ. C. 522, 524, 565, 1606, 2119, 2299 et seq.

Art. 529. Obligations and rights relating to sums due or movable articles, shares or interests in financial, commercial or manufacturing companies, even if real estate is owned by the companies in connection with these enterprises, are personal property by regulation of law. Such shares or interests are considered personal property only with respect to each shareholder as long as the company lasts.

Perpetual or life annuities, whether paid by the Government or by private individuals, are personal property by regulation of law. Civ. C. 530, 1853 et seq., 1909 et seq., 1968 et seq., 2119, 2279.

Art. 530. Any perpetual annuity granted as consideration for the price of sale of real estate, or as

the condition of an assignment of real estate, with or without consideration, is essentially redeemable.

Nevertheless, creditors shall have the right to regulate the terms and conditions of the redemption.

They are also allowed to stipulate that the annuity cannot be redeemed before a certain time, which can never exceed thirty years; any stipulation to the contrary is void. Civ. C. 1133, 1184, 1654 et seq., 1911, 2103, 2108, 2262.

Art. 531. Boats, ferry-boats, ships, mills and floating baths and generally all works which are not fastened to pillars and do not form part of a building, are personal property : an attachment against certain of these things may, nevertheless, owing to their importance, be subject to certain special provisions, as shall be explained in the Code of Civil Procedure. Civ. C. 519, 528, 2120,

Art. 532. Materials coming from a building which has been torn down, those gathered for erecting a new building, are personal property until they are used by the workmen in the construction. Civ. C. 527, 552 et seq.

Art. 533. The word *movable* used alone in regulations laid down by law or by man, without any other addition or designation, does not include ready money, precious stones, credits, books, medals, instruments for scientific or artistic purposes and for trade, clothing, horses, carriages, arms, grain, wines, hay and other articles of food: neither does it include what forms part of a business. Civ. C. 452, 1350, 1352.

Art. 534. The words *furnishing movables* only include furniture intended for use or ornamentation

in dwellings, such as hanging tapestries, beds, seats, mirrors, clocks, tables, china and other articles of such kind.

Pictures and statuary which form part of the furniture of a lodging are also included, but not collections of pictures which may be in picture galleries or special rooms.

The same rule applies to china, which is only included in the denomination of *furnishing movables* when it forms part of the decoration of a dwelling. Civ. C. 1350, 1352.

Art. 535. The term *personal property*, that of *furniture* or *movable effects*, comprise generally everything which is considered as movable, according to the rules above set forth.

A sale or donation of a furnished house includes only the furnishing movables. Civ. C. 527 et seq., 893, 948 et seq., 1350, 1352.

Art. 536. A sale or donation of a house with everything it contains, does not include the ready money, nor the debts due, nor the other rights resulting from deeds which may have been deposited in the house: all other movable effects are included. Civ. C. 1350, 1352.

Chapter III.

Of Property in Connection with Those who own it.

Art. 537. Private individuals have the free disposal of what belongs to them, subject to the modifications established by law.

Property which does not belong to private individ-

uals is administered and can only be conveyed in the manner and according to the special rules which apply to it. Civ. C. 25, 128, 217 et seq., 450, 481 et seq., 499, 509, 513, 544, 1421, 1449, 1538, 1554 et seq., 1576, 1594 et seq., 1712, 2045, 2227.

Art. 538. Ways, roads and streets kept up by the State, rivers and streams floatable and navigable, beaches, alluvion and derelictions of the sea, ports, harbors, anchorages, and generally all parts of French territory which cannot become private property, are considered as forming part of the Public Domain. Civ. C. 714, 1128, 1598, 2226.

Art. 539. All property which is vacant or is without an owner, and that of persons who die without heirs or whose successions are abandoned, belong to the Public Domain. Civ. C. 560, 713, 723 et seq., 768 et seq., 811 et seq., 2227.

Art. 540. Doors, walls, trenches and bulwarks of fortified cities and fortresses also form part of the Public Domain. Civ. C. 714, 2226.

Art. 541. The same rule applies to lands, fortifications and bulwarks of cities which are no longer fortified places: they belong to the State, if they have not been lawfully conveyed or if the right of ownership has not been outlawed against it. Civ. C. 2227.

Art. 542. County property is the ownership or revenue which has been acquired by the inhabitants of one or several counties. Civ. C. 537, 643, 645, 649 et seq., 910, 937, 1596, 1712, 2045, 2121, 2153, 2227.

Art. 543. One may have a right of ownership or simply a right of enjoyment over property or only the right to claim land easements thereon. Civ. C. 544 et seq., 578 et seq., 625 et seq., 637 et seq., 2071 et seq., 2094 et seq.

TITLE SECOND.

Of Ownership.

(Passed January 27, 1804. Promulgated February 6, 1804.)

Art. 544. Ownership is the right to enjoy and dispose of things in the most absolute manner, provided they are not used in a way prohibited by law or regulations. Civ. C. 537, 543, 545, 640 et seq., 649 et seq., 686 et seq., 711 et seq., 913 et seq., 1370, 1382 et seq., 1554 et seq., 1598, 2078.

Art. 545. No one can be compelled to give up his property, unless it is for public use and for a proper indemnity previously given. Civ. C. 537, 660 et seq., 643, 660 et seq., 682 et seq., 841.

Art. 546. The ownership of personal or real property gives the right to everything it produces and to what is added to it, by way of accession either naturally or artificially.

Such right is called *right of accession.* Civ. C. 547 et seq., 551 et seq., 712, 1018 et seq., 1352, 1614, 1692, 2016, 2118, 2133, 2204, 2229.

Chapter I.

Of the Right of Accession to what a Thing produces.

Art. 547. Natural or cultivated fruits of the earth:

Civil fruits (1).

The young of animals belong to the owner by right of accession. Civ. C. 583 et seq., 586, 630, 729, 928, 1014 et seq.

Art. 548. Fruits produced by a thing only belong to the owner provided he repays the expense of ploughing, labor and sowing incurred by third parties. Civ. C. 585, 2102.

Art. 549. A simple possessor only acquires the product if he possesses in good faith: if not, he is obliged to return the revenue together with the thing itself to the owner who claims it. Civ. C. 138, 550, 555, 1378 et seq., 2102 et seq., 2228 et seq., 2262, 2268, 2279.

Art. 550. A possessor is in good faith when he possesses as owner, by virtue of a deed transferring property of which the flaws are unknown to him. He ceases to be in good faith from the time such flaws become known to him. Civ. C. 138, 549, 555, 1378, 1635, 2231, 2265 et seq., 2268, 2279.

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(1). Civil fruits are the revenues derived by operation of the law or by agreement.

Chapter II.

Of the Right of Accession to what adds itself to or becomes embodied with a Thing.

Art. 551. Everything which adds itself to or becomes embodied with a thing belongs to the owner, according to the rules hereafter laid down. Civ. C. 546, 712, 1018 et seq., 1615, 2118, 2133, 2204.

Section I.

Of the Right of Accession in connection with Real Estate.

Art. 552. Ownership of the land carries with it ownership of what is above and below it.

An owner can make upon it all the plantations and constructions which he deems proper, with the exceptions specified in the title *Of Servitudes or Land Burdens.*

He can make below all constructions and excavations which he deems proper and draw from these excavations all the products which they may give, subject to the restrictions resulting from the laws or the regulations relating to mines, or from police laws and regulations. Civ. C. 544, 553, 637 et seq., 641, 671 et seq., 674, 678, 1859, 2118, 2133.

Art. 553. All constructions, plantations and works on a piece of land, or below it, are supposed to have been made by the owner at his expense, and to belong to him, if the contrary is not proved; without prejudice to the ownership, either of a subterranean work under a building or to any part of a building, which a third party may have acquired or might acquire by

prescription. Civ. C. 552, 664, 1350, 1352, 2219 et seq., 2228, 2262, 2265 et seq.

Art. 554. The owner of land who has made constructions, plantations or works thereon with materials which do not belong to him must pay their value; he can also be ordered to pay damages, if there is occasion therefor; but the owner of the materials cannot remove them. Civ. C. 1149.

Art. 555. When the plantations, constructions or works have been made by a third party and with his materials, the owner of the property has the right to keep them or to compel such third party to remove them.

If the owner of the land asks to have the plantations or constructions removed, it shall be done at the expense of the person who has made them, without entitling him to any indemnity; he can even be ordered to pay damages, if there is occasion therefor, for the injury which the owner of the land may have suffered.

If the owner prefers to keep the plantations and constructions, he owes the payment of the value of the materials and the price of the labor, without regard to the increase or loss in value which may have been occasioned to the land. Nevertheless, if the plantations, constructions or works have been made by a third party who has been ejected and who has not been ordered to return the product owing to his good faith, the owner cannot ask that the said works, plantations and constructions be removed; but he shall have the choice, either of reimbursing the value of the materials and the price of the labor, or of repaying a sum equal to the additional value which the

property has acquired. Civ. C. 549 et seq., 552, 599, 867, 1149, 1372, 1375, 1381, 1673, 1948.

Art. 556. Accretions and increase of soil which add themselves successively and imperceptibly to land bordering a river or stream are called *alluvion.*

Alluvion belongs to the owner of the riparian property, whether it be in connection with a river or a stream navigable for boats or rafts or not; provided however the owner leaves, in the first case, a way or towing-path, in accordance with the regulations. Civ. C. 538, 557, 563, 596, 650, 1615, 2118, 2133.

Art. 557. The same rule applies to derelictions formed by running water which withdraws imperceptibly from one of its banks and encroaches upon the other: the owner of the bank uncovered gains the advantage of the alluvion and the riparian owner on the opposite bank cannot claim the land which he has lost.

Such right does not apply to derelictions of the sea. Civ. C. 538, 556, 563.

Art. 558. Alluvion does not take place in connection with lakes and ponds, of which the owner always retains the land covered by the water when it reaches the level of the outlet of the pond, even if the volume of water should decrease.

On the other hand, the owner of a pond does not acquire any right to the riparian lands which the water covers in cases of extraordinary rise. Civ. C. 556.

Art. 559. If a river or a stream, navigable or not, carries away, owing to a sudden irruption, a considerable part of a riparian field which can be identified,

and carries it towards a lower field or to the opposite bank, the owner of the part taken away can claim his property; but he is obliged to bring an action within one year; after such time it cannot be maintained, unless the owner of the field to which the part carried away has been added has not yet taken possession of it. Civ. C. 538, 2227, 2264.

Art. 560. Islands, islets, accretions, formed in the beds of rivers or streams navigable for boats or rafts, belong to the State, if there is no title or prescription to the contrary. Civ. C. 538, 556, 562, 713, 2227.

Art. 561. Islands and accretions formed in rivers not navigable to boats or rafts, belong to the riparian owners on the side where the island is formed : if the island is not formed on one side, it belongs to the riparian owners on both sides of an imaginary line supposed to be drawn in the middle of the river. Civ. C. 556, 562.

Art. 562. If a river or stream, by opening for itself a new arm, cuts off and surrounds the field of a riparian owner and makes an island of it, such owner retains the ownership of his field, although the island is formed in a river or stream navigable to boats or rafts. Civ. C. 538, 556, 561 et seq.

Art. 563. (Law of April 8, 1898). If a river or a stream navigable for boats or rafts opens for itself a new course by abandoning its former bed, the riparian owners may acquire the ownership of such former bed, each one straight ahead, up to a line supposed to be drawn in the middle of the river. The price of the former bed is fixed by experts appointed by the President of the Tribunal of First Instance of the

place where the land is situated, upon the application of the Prefect of the department.

If the riparian owners fail to declare, within three months of the notice given them by the Prefect, their intention to make the purchase at the price fixed by the experts, the conveyance of the former bed shall take place according to the rules which apply to conveyances of domains of the State.

The proceeds of the sale are distributed among the owners of the lands covered by the new course, by way of indemnity, in proportion to the value of the land taken from each of them.

Art. 564. Pigeons, rabbits and fish which go to another pigeon-house, warren or pond, belong to the owner thereof, unless they have been allured by fraud or guile. Civ. C. 524, 1382, 2268.

Section II.

Of the Right of Accession in connection with Personal Property.

Art. 565. When the right of accession applies to two movable things belonging to different owners, it is governed entirely by the principles of natural equity.

The following rules shall be used as examples to enable the Court to decide unforeseen cases, according to special circumstances. Civ. C. 528 et seq., 546, 551, 712, 1615, 2279.

Art. 566. When two things, belonging to different owners, have been so joined together as to form one whole, but, nevertheless, can be taken apart so that one may exist without the other, the whole belongs

to the owner of the thing which forms the principal part, subject to the obligation of paying to the other owner the value of the thing thus added. Civ. C. 576.

Art. 567. The part to which the other has been added for the use, ornamentation or completion of the first only, is considered the principal one.

Art. 568. Nevertheless, when the thing added is of much more value than the principal thing and when it has been added without the knowledge of the owner, he may ask that the thing added be separated, for the purpose of being returned to him, even if the thing to which it has been added might be deteriorated thereby. Civ. C. 815.

Art. 569. If of two things put together to make a whole, one cannot be considered as the accessory of the other, the one which has the greater value or volume is considered the principal thing, provided they are of about the same value. Civ. C. 573.

Art. 570. If a mechanic or any other kind of person has used material which does not belong to him, for the purpose of making a thing of a new kind, whether or not the material can resume its original form, the person who was the owner thereof has the right to claim the thing which has been so made, by reimbursing the price of workmanship. Civ. C. 1787 et seq.

Art. 571. If, however, the workmanship should be so important that it greatly exceeds the value of the material used, then the work shall be considered the principal part and the workman shall have the right to keep the thing upon which he has worked,

by reimbursing to the owner the price of the material.

Art. 572. When a person has made use partly of material belonging to him, partly of material which did not belong to him, to make a thing of a new kind, and when neither of these two materials have been entirely destroyed but cannot be separated without depreciation, the thing belongs jointly to both owners, to the one on account of the material which belongs to him, and to the other on account both of the material belonging to him and the price of his workmanship. Civ. C. 815, 1686 et seq.

Art. 573. If a thing has been made by a mixture of several materials belonging to different owners but of which none can be considered as the principal material, the person without whose knowledge the materials have been mixed can ask that they be divided, if they can be separated.

If the materials can no longer be separated without depreciation, the owners acquire the property jointly, in proportion to the quantity, the quality and the value of the materials belonging to each of them. Civ. C. 815, 1686.

Art. 574. If the material belonging to one of the owners should be far superior to the other in quantity and value, then the owner of the material which is superior in value may claim the thing produced by the mixture, by reimbursing to the other the value of his material.

Art. 575. When a thing remains the joint property of the owners of the materials of which it has been made, it must be sold at auction for their common benefit. Civ. C. 815, 1686.

Art. 576. In all cases in which the owner of material which has been used without his knowledge to make a thing of a different kind, has the right to claim the ownership of such thing, he can at his choice either ask that material be returned to him of the same kind, quantity, weight, measure and quality, or ask for the value thereof.

Art. 577. Those who have made use of materials belonging to others, without their knowledge, can also be ordered to pay damages, if there is occasion therefor, without prejudice to the proceedings which may be brought by exceptional means, should circumstances warrant it. Cic. C. 1149.

TITLE THIRD.

Of Usufruct, Use and Habitation.

(Passed January 30, 1804. Promulgated February 9, 1804.)

Chapter I.

Of Usufruct.

Art. 578. Usufruct is the right to enjoy things of which another has the ownership, in the same manner as the owner himself, but on condition of not altering their substance. Civ. C. 384 et seq., 543, 544, 579 et seq., 754, 767, 1410, 1424, 1555, 1562, 1568, 1709, 2081, 2085, 2118.

Art. 579. Usufruct is established by law or by a person's wish. Civ. C. 384, 754, 893, 899, 917, 949, 1094, 1401, 1403, 1410, 1422, 1424, 1530, 1549.

Art. 580. Usufruct can be established absolutely, or up to a certain date, or conditionally. Civ. C. 900, 1101, 1134, 1168 et seq., 1181 et seq.

Art. 581. It can apply to all kinds of personal property or real estate. Civ. C. 516, 526 et seq. 587.

Section I.

Of the Rights of a Usufructuary.

Art. 582. A usufructuary has the right to the enjoyment of all kinds of fruits, whether natural, cultivated or civil, which the thing of which he has the usufruct can produce. Civ. C. 547, 578, 583 et seq.

Art. 583. Natural fruits are those which result from the spontaneous production of the earth. The increase and young of animals are also natural fruits.

Cultivated fruits of land are those obtained by cultivation. Civ. C. 520, 547 et seq., 585, 590 et seq., 598, 1403, 1711, 1800 et seq., 1811.

Art. 584. Civil fruits are rents of houses, interest on sums due, and payments of annuities.

The rent of leases on shares is also included in the class of civil fruits. Civ. C. 529 et seq., 586 et seq., 1153, 1709, 1905, 1980, 2277.

Art. 585. Natural and cultivated fruits hanging from branches or standing upon roots, when the usufruct begins, belong to the usufructuary.

Such fruits which are in the same state when the usufruct comes to an end belong likewise to the owner, without compensation from the one to the other for labor and sowing,but also without prejudice

to the portion of fruits which may belong to the settler paying rent in kind, if there was such a settler at the beginning or at the termination of the usufruct. Civ. C. 590, 1401 et seq., 1571, 1763.

Art. 586. Civil fruits are supposed to be earned day by day and belong to the usufructuary, in proportion to the duration of his usufruct. Such rule applies to the rents of leases on shares as well as to rents of houses and other civil fruits. Civ. C. 584, 588, 1153, 1709, 1711, 1905, 1909, 1980, 2277.

Art. 587. If a usufruct includes things which cannot be used without being consumed, such as money, grain, liquids, the usufructuary has the right to use them, but on condition of returning others in like quantity, quality and value, or their value at the end of the usufruct. Civ. C. 617, 1238, 1532, 1892 et seq., 1902 et seq.

Art. 588. A usufruct of a life annuity also gives to the usufructuary, during the continuance of his usufruct, the right to receive payment of the annuities, without being obliged to return anything. Civ. C. 1568, 1964, 1968 et seq.

Art. 589. If the usufruct includes things which, without being consumed at once, are subject to be deteriorated little by little by use, such as clothes, articles of furniture, the usufructuary has the right to make use of them for the purpose for which they are intended, and is only obliged to return them, at the end of the usufruct, in the condition in which they are, unless damaged through his neglect or fault. Civ. C. 595, 617 et seq., 631, 950, 1382, 1566.

Art. 590. If the usufruct includes underwood, the

usufructuary is obliged to follow the order and quantity of sections to be cut, in accordance with the parcelling or the uniform custom of the owners; but the usufructuary or his heirs are not entitled to any indemnity for the ordinary sections, either of underwood, staddles, or forest trees, which have not been cut during his enjoyment.

Trees which can be removed from a nursery without damaging it only form part of the usufruct, on condition by the usufructuary of complying with the customs of the place in replacing them. Civ C. 521, 591 et seq., 1159, 1403.

Art. 591. A usufructuary also has the benefit, but always by following the periods and customs of the former owner, of all sections of forest trees which are regularly cut, whether the sections are cut periodically over a certain extent of land, or whether a certain quantity of trees is taken indiscriminately over the whole surface of the estate. Civ. C. 590, 592 et seq.

Art. 592. In all other cases a usufructuary cannot touch the forest trees: he can only use the trees which have been uprooted or broken by accident for the repairs which he is bound to make: he can even have trees cut down for that purpose, if necessary, provided the necessity of so doing is admitted by the owner. Civ. C. 590 et seq.

Art. 593. He can take poles for vines in the woods; he can also take from the trees what they bear annually or periodically; all of which shall be done in accordance with the customs of the country or the habits of the owners. Civ. C. 590, 1159.

Art. 594. Fruit trees which die, even those which

are uprooted or broken by accident, belong to the usufructuary, on condition of replacing them by others. Civ. C. 587, 592, 601.

Art. 595. A usufructuary may keep the enjoyment for himself or lease it to others, or even sell or assign his right without consideration. If he leases it, he must comply, as to the periods when leases must be renewed or as to their duration, with the rules established for the husband with respect to the property of the wife under the title *Of Marriage Contracts and of the Respective Rights of Husband and Wife.* Civ. C. 584, 634, 894, 1429 et seq., 1582, 1709, 1711.

Art. 596. A usufructuary has the enjoyment of the increase resulting from alluvion to the thing of which he has the usufruct. Civ. C. 556, 563.

Art. 597. He has the enjoyment of the rights to servitudes, of the rights of way, and generally of all rights which an owner may enjoy, and he enjoys them in the same way as the owner himself. Civ. C. 544, 578, 598, 614, 637 et seq., 649, 706.

Art. 598. He has also the enjoyment, in the same way as the owner, of the mines and quarries which are being worked, when the usufruct begins; but, nevertheless, if such working cannot be carried on without a concession, the usufructuary can only have the enjoyment thereof after he has obtained the permission of the King (*President of the Republic*).

He has no right to the mines and quarries which have not yet been opened, nor to the turf pits which have not been worked, nor to the treasure-trove which may be discovered during the continuance of the usufruct. Civ. C. 552, 716, 1403.

Art. 599. An owner cannot, by his acts or in any manner whatsoever, interfere with the rights of the usufructuary.

On the other hand, the usufructuary cannot claim any indemnity, at the end of the usufruct, for the improvements which he may claim to have made, even if the value of the thing has been increased thereby.

Nevertheless, he or his heirs may remove the mirrors, pictures and other ornaments which he may have caused to be put up, provided he restores the premises to their former condition. Civ. C. 525, 555, 600, 617, 701 et seq., 724, 2236.

Section II.

Of the Obligations of Usufructuaries.

Art. 600. A usufructuary takes things in the condition in which they are: but he can only enter into the enjoyment thereof after making an inventory of the movable articles and a description of the real estate subject to the usufruct, in the presence of the landlord, or he having been duly summoned. Civ. C. 385, 601, 603, 626, 950, 1415, 1442, 1504, 1533, 1562, 1580, 1720, 1731.

Art. 601. He shall give security to act as a prudent owner, unless he has been exempted therefrom by the instrument creating the usufruct: nevertheless, the father and mother who have the legal usufruct of the property of their children, the vendor or donor who has retained the usufruct, are not obliged to give security. Civ. C. 384 et seq. 602 et seq. 626, 950, 1137, 1550, 2011 et seq., 2040 et seq.

Art. 602. If a usufructuary cannot furnish security the real estate shall be leased or is sequestrated;

The sums included in the usufruct shall be invested;

The goods are sold and the proceeds are likewise invested;

The interest on such sums and the farm rents belong in that case to the usufructuary. Civ. C. 796, 805, 1905 et seq., 1955 et seq., 2041.

Art. 603. If the usufructuary has not furnished security, the owner may demand that the furniture which is subject to be deteriorated by use should be sold and the proceeds invested in the same way as in connection with goods; and the usufructuary has then the enjoyment of the interest during his usufruct: nevertheless, the usufructuary can ask, and the Court may order, according to circumstances, that a part of the furniture required for his use shall be left to him, on his own sworn guarantee, and on condition of producing it at the expiration of the usufruct. Civ. C. 602, 617.

Art. 604. Delay in furnishing security does not deprive the usufructuary of the fruits to which he may be entitled: they are due to him from the time the usufruct commences. Civ. C. 1014.

Art. 605. A usufructuary is only bound to keep the property in good repair.

Structural repairs shall continue to be made by the owner, unless they have been occasioned by the fact that the property has not been kept in good repair since the beginning of the usufruct; in which case the usufructuary is also obliged to assume them. Civ. C. 1409, 1754 et seq.

Art. 606. Structural repairs are those to main walls and vaults, the replacing of beams and covering of roofs completely;

Also, rebuilding embankments, breast walls or boundary walls completely.

All other repairs are for keeping the property in good order. Civ. C. 605.

Art. 607. Neither the owner nor the usufructuary is obliged to rebuild what has crumbled away by age, or what has been destroyed accidentally. Civ. C. 599, 617 et seq., 623 et seq., 1148, 1302 et seq., 1730 et seq., 1755.

Art. 608. A usufructuary is liable during the time of his enjoyment for all the annual charges upon the estate, such as taxes and others, which according to customs are considered as charges upon the revenue. Civ. C. 635, 1159.

Art. 609. As to charges which may be imposed upon the estate during the continuance of the usufruct the owner and the usufructuary contribute to the same as follows:

The owner is obliged to pay them and the usufructuary must allow him interest;

If they are advanced by the usufructuary he has a claim for repayment of the capital, at the expiration of the usufruct. Civ. C. 611 et seq., 617 et seq., 1905, 1907.

Art. 610. A legacy made by a testator of a life annuity or of an allowance for support must be paid wholly by the universal legatee of the usufruct and by the legatee under universal title in proportion to his enjoyment, without any right on their part to

claim repayment thereof. Civ. C. 588, 608, 871, 917 et seq., 1003, 1010 et seq., 1024, 1978.

Art. 611. A usufructuary of a limited portion is not liable for the debts for which the estate is mortgaged: if he is forced to pay them he has his remedy against the owner, subject to what is stated in article 1020 of the title *Of Donations Inter Vivos and of Wills.* Civ. C. 371, 874, 1014, 1020, 1024, 1251, 2114 et seq., 2166 et seq., 2178.

Art. 612. A universal usufructuary or a usufructuary under universal title must contribute with the owner to the payment of the debts as follows:

The value of the estate, subject to the usufruct, is appraised; the contribution to the debts is then determined, in accordance with that value.

If a usufructuary chooses to advance the amount for which the property is liable, the principal is returned to him without any interest, at the end of the usufruct.

If the usufructuary is not willing to make that advance, the owner has the choice between either paying such sum, and in that case the usufructuary owes him interest during the continuance of the usufruct, or causing a portion of the property subject to the usufruct to be sold, to the extent of what is due. Civ. C. 609 et seq., 871, 1009, 1012, 1017, 1905, 1907.

Art. 613. A usufructuary is only bound to pay the expenses of the suits relating to the enjoyment and the other judgments which might result from such suits. Civ. C. 600.

Art. 614. If, during the continuance of the

usufruct, a third party makes any encroachment upon the estate or interferes in any other way with the rights of the owner, the usufructuary is bound to notify him; should the usufructuary fail to do so, he is liable for any damages to the owner which may result therefrom, as he would be for dilapidations committed by himself. Civ. C. 1149, 1382 et seq., 1726, 1768.

Art. 615. If the usufruct only bears upon an animal which dies, not owing to the fault of the usufructuary, he is not obliged to return another one, nor to pay its value. Civ. C. 607, 616 et seq., 623 et seq., 950, 1711, 1810, 1827.

Art. 616. If the whole herd subject to the usufruct dies by accident or disease and not through the fault of the usufructuary, he is only bound to account to the owner for the skins or their value.

If the whole herd does not die, the usufructuary is bound to replace the number of the animals which have died, taking into account the growth of the herd. Civ. C. 607, 615, 617, 622 et seq., 1711, 1800 et seq., 1809 et seq., 1822, 1825, 1827.

Section III.

Of the Manner in which Usufruct terminates.

Art. 617. Usufruct terminates :

By the natural or civil (1) death of the usufructuary;

By the expiration of the time for which it was granted;

(1) Civil death was abolished by the law of May 31st 1854.

By the consolidation or vesting in the same person of the two capacities of usufructuary and owner;

By not making use of the right during thirty years;

By the total loss of the thing upon which the usufruct was established. Civ. C. 703 et seq., 1134, 1234 et seq., 1300 et seq., 2177, 2219, 2262, 2265.

Art. 618. Usufruct may also terminate by the wrongful use which the usufructuary makes of his enjoyment, either by committing waste upon the estate, or by allowing it to be damaged for want of repairs.

Creditors of the usufructuary may take part in controversies for the protection of their rights; they may offer to repair the damage done and to give guarantees for the future.

The Judges may, according to the seriousness of the case, either order the absolute cancellation of the usufruct, or only that the owner recover the enjoyment of the thing subject thereto, on condition of paying annually to the usufructuary or to his legal representatives a fixed amount, up to the time the usufruct should have terminated. Civ. C. 601, 605, 614, 617, 622, 1149, 1166 et seq., 1760.

Art. 619. Usufruct which is not granted to private individuals only lasts for thirty years. Civ. C. 617.

Art. 620. Usufruct granted until a third party reaches a given age lasts until that time, even if he dies before reaching such age. Civ. C. 1168, 1176.

Art. 621. The sale of a thing subject to usufruct does not in any way alter the right of the usufructuary: he continues to have the enjoyment of his usufruct unless he has formally given it up. Civ. C. 622, 1020, 1582 et seq., 2125.

Art. 622. The creditors of the usufructuary can have a renunciation set aside, if it is prejudicial to them. Civ. C. 1053, 1167, 1464, 2225.

Art. 623. If a part only of the thing subject to usufruct is destroyed, the usufruct continues as to what remains. Civ. C. 615 et seq., 624.

Art. 624. If a usufruct only applies to a building which is destroyed by fire or some other accident, or if the building is so old that it falls down, the usufructuary shall not have the enjoyment of the land nor of the materials.

If the usufruct applies to an estate of which the building formed part, the usufructuary has the enjoyment of the land and of the materials. Civ. C. 617, 623, 1148, 1302 et seq.

Chapter II.

Of Use and Habitation

Art. 625. The rights of use and habitation are acquired and lost in the same manner as usufruct. Civ. C. 579 et seq., 617 et seq., 628 et seq., 1127, 1465.

Art. 626. A person is not entitled to the enjoyment of the same, unless he has previously furnished security and drawn up schedules and inventories as in the case of usufruct. Civ. C. 600 et seq., 2011 et seq. 2040 et seq.

Art. 627. A person having a right of use or habitation must act as a prudent owner in the enjoyment thereof. Civ. C. 601, 1137.

Art. 628. The rights of use and habitation are regulated by the deeds creating them and are more or less extensive, according to the provisions thereof. Civ. C. 579, 629 et seq., 1134.

Art. 629. If the deed is not explicit as to the extent of these rights, they are regulated as follows:

Art. 630. A person who has the use of the fruits of an estate can only demand what is necessary for his wants and those of his family.

He can demand those which are necessary even for the children born to him since the creation of the use. Civ. C. 520, 548, 583 et seq., 628, 630 et seq.

Art. 631. A person having a right of use cannot transfer or lease it to another person. Civ. C. 595, 634, 1127.

Art. 632. A person who has a right of habitation in a house can live in it with his family, although he was not married when such right was granted to him. Civ. C. 627, 630, 633 et seq.

Art. 633. The right of habitation is limited to what is necessary for the habitation of the person to whom the same is granted and of his family. Civ. C. 630, 632.

Art. 634. The right of habitation cannot be assigned or leased. Civ. C. 595, 631.

Art. 635. If a person having a right of use takes all the fruits of an estate, or if he occupies the whole house, he is bound to pay the expenses of cultivation, of repairs to keep the property in order, and the taxes, in the same manner as a usufructuary.

If he only takes a part of the fruits or only occupies a part of the house, he contributes thereto in propor-

tion to what he has the enjoyment of. Civ. C. 605 et seq., 608 et seq.

Art. 636. The use of woods and forests is regulated by special laws.

TITLE FOURTH.

Of Servitudes or Land Burdens.

(Passed January 31, 1804; promulgated February 10, 1804.)

Art. 637. A servitude is a charge laid on an estate for the use and advantage of an estate belonging to another owner. Civ. C. 526, 543 et seq. 597, 640 et seq., 649 et seq., 686 et seq., 1433, 1437, 1638, 2177.

Art. 638. A servitude does not establish any predominance of one tenement over the other.

Art. 639. It results either from the natural location of the premises or from obligations imposed by law or from agreements between owners. Civ. C. 640 et seq., 649 et seq., 686 et seq., 1134, 1370.

Chapter I.

Of Servitudes resulting from the Location of Premises.

Art. 640. Lower tenements are compelled with respect to higher tenements to receive the waters flowing naturally therefrom, provided no manual labor has been used.

The owner of a lower tenement cannot raise a dam to stop the flow of water.

The owner of a higher tenement cannot do anything which renders the servitude of the lower tenement more burdensome. Civ. C. 641 et seq., 681, 688, 690, 700 et seq.

Art. 641. (Law of April 8, 1898). Every owner has the right to make use and dispose of the rain water which falls on his tenement.

If the use of such water or the course given to it renders more burdensome the natural servitude of flow established by article 640, an indemnity shall be due to the owner of the lower tenement.

The same provision applies to spring water originating on a tenement.

When owing to borings or subterranean work an owner causes waters to rise from his tenement, the owners of lower tenements must receive them; but they are entitled to an indemnity in case of damage resulting from their flow.

Houses, courts, gardens, parks and enclosures adjoining dwellings shall not be subjected to any greater inconvenience on account of the servitude of flow, in the cases specified in the foregoing paragraphs.

The controversies which the establishment and use of the servitudes specified in those paragraphs shall give rise to, and the settlement of the indemnities due to the owners of the lower tenements, if there should be occasion therefor, shall in the first instance be carried before the Justice of the Peace of the district, who in his decision must reconcile the interests of agriculture and trade with the respect due to ownership.

If an appraisement is necessary, only one expert shall be appointed.

Art. 642. (Law of April 8, 1898). A person who has a spring on his property can always use the water as he chooses, within the limits and according to the wants of his tenement.

The owner of a spring can no longer use it to the detriment of the owners of the lower tenements who since more than thirty years have made and terminated on the tenement where the spring originates apparent and permanent works intended for the use of the water or to facilitate its running through their property.

Nor can he make use of it in a manner to deprive the inhabitants of a district, village or hamlet of the water they require; but if the inhabitants have not acquired the use of the water or obtained it by prescription, the owner can claim an indemnity which shall be fixed by experts.

Art. 643. (Law of April 8, 1898). If as soon as they flow out of the tenement where they originate, the spring waters form a stream presenting the nature of public running waters, the owner cannot divert them from their natural course, to the detriment of those using them lower down.

Art. 644. A person whose property is on the border of a stream which has not been declared to belong to the Public Domain by article 538 of the title *Of Different Kinds of Property*, can use the water as it flows past to irrigate his land.

A person through whose tenement such water flows can even use it over the distance it runs through such tenement, provided it is put back in its ordinary channel when it leaves his tenement. Civ. C. 538, 645, 650.

Art. 645. If a controversy arises between owners to whom these waters may be of use, the Tribunals in making their decision must reconcile the necessities of agriculture with the respect due to ownership; and in all cases the special and local regulations applying to streams and the use of water must be followed. Civ. C. 644.

Art. 646. Every owner may compel his neighbor to mark the boundaries of their adjoining estates. Setting boundaries is done at joint expense. Civ .C. 655, 669.

Art. 647. Every owner can enclose his property, subject to the exception contained in article 682. Civ. C. 544, 552, 648, 663, 666, 678 et seq., 682.

Art. 648. The owner who wishes to enclose his property loses his right to commonage and free pasturage, in proportion to the land which he withdraws therefrom. Civ. C. 647.

Chapter II.

Of Servitudes established by Law.

Art. 649. Servitudes established by law are those which apply to public use or the use of a district or of private individuals. Civ. C. 639, 1370.

Art. 650. Those established for public use or for the use of a district apply to the towing-path along rivers navigable to boats or rafts, the construction or repairing of roads, and other public or municipal works.

All matters relating to such servitudes are regulated by law or special rules. Civ. C. 538, 556.

Art. 651. The law imposes upon owners various obligations towards each other independently of any agreement. Civ. C. 640, 655 et seq, 674 et seq., 681 et seq., 1370.

Art. 652. Some of those obligations are regulated by the laws relating to rural police;

The others relate to party walls, to ditches in common, to cases in which a countermure is necessary, to the rights of light on the property of a neighbor, to the dropping of water from roofs, to the right of way. Civ. C. 653 et seq., 674, 675, 681, 682.

Section I.

Of Party Walls and Ditches in Common.

Art. 653. In cities and in the country, every wall forming the separation between buildings up to the level where the wall ceases to be a party wall or between courtyards and gardens, and even between enclosures in the fields, is supposed to be a party wall, unless there is a deed or indication establishing the contrary. Civ. C. 654, 665, 666 et seq., 670, 675 et seq., 1350, 1352.

Art. 654. When the top of a wall is straight and perpendicular on one of its sides and slants towards the other, it is an indication that it is not a party wall;

Even when there is only on one side either a coping or ridges of stones and corbels which have been placed there when the wall was constructed.

In such cases the wall is supposed to belong exclusively to the owner on whose side the gutter or

the corbels and ridges of stones are placed. Civ. C. 676 et seq., 681, 1350, 1352.

Art. 655. Repairs to a party wall or its reconstruction are paid for by all those who have a right thereto, and in proportion to each one's rights. Civ. C. 656 et seq., 659, 663, 664, 669.

Art. 656. Nevertheless, every joint owner of a party wall may be exempted from contributing to the repairs and reconstruction, by abandoning his rights to such party wall, provided a building belonging to him does not rest on it. Civ. C. 699.

Art. 657. Every joint owner may build against a party wall and place beams or joists thereon, through the whole thickness of the wall less 54 millimetres (two inches), without prejudice to the neighbor's right to have the beams shortened with a chisel up to half the thickness of the wall, in case he should want himself to rest beams thereon at the same place, or to build a chimney against it. Civ. C. 661, 662, 674, 675.

Art. 658. Every joint owner may raise a party wall; but he must pay the whole expense of raising it, the repairs to keep it in order above the level of the common enclosure, and also an indemnity for the additional cost resulting from the raising of the wall, according to its value. Civ. C., 660, 662, 1382, 1754.

Art. 659. If a party wall is not in a condition to stand additional height, the person wishing to raise it must have it entirely reconstructed at his expense, and the additional thickness must be taken on his side. Civ. C. 662.

Art. 660. A neighbor who has not contributed to

have the wall raised can acquire joint rights thereto, by paying one-half of the expense incurred and the value of one-half of the land used for the additional thickness, if there is any. Civ. C. 661.

Art. 661. Every owner adjoining a wall has also the right to make it a party wall, wholly or in part, by reimbursing to the owner of the wall half its value or half the value of the part over which he wishes to have a joint right and half the value of the land on which the wall is built. Civ. C. 660, 676.

Art. 662. A neighbor cannot make a hole in the body of a party wall or build or rest any construction thereon, without the consent of the other, or in case of his refusal, without having experts determine the necessary measures to take, in order that the new construction shall not interfere with the rights of the other neighbor. Civ. C. 657 et seq., 675.

Art. 663. Every one may, in cities and suburbs, compel his neighbor to contribute to the construction or to the repairs of enclosures which separate houses, court-yards and gardens situated in such cities and suburbs: the height of the enclosure shall be fixed according to the special regulations or the uniform customs established; and if no such customs or regulations exist, every boundary wall between neighbors which is hereafter constructed or repaired shall be of a height of at least thirty-two decimetres (ten feet) including the coping, in cities of fifty thousand inhabitants and more, and of twenty-six decimetres (eight feet) in other cities. Civ. C. 645, 655, 656, 660, 661, 1159.

Art. 664. When the various floors of a building

belong to different owners, if the title deeds do not determine the manner in which the repairs and reconstructions shall be undertaken, they shall be made as follows:

The main walls and the roof shall be paid for by the owners, each one in proportion to the value of the floor belonging to him.

The owner of each floor makes the flooring upon which he walks.

The owner of the first floor makes the staircase leading thereto; the owner of the second floor makes the staircase leading to his floor from the first floor and so on. Civ. C. 605, 606, 655, 815, 1686.

Art. 665. When a party wall or a house is reconstructed, all the active or passive servitudes continue in favor of the new wall or new house, provided they are not made more burdensome, and the reconstruction is made before prescription has taken effect. Civ. C. 703, 704, 707, 2262, 2265.

Art. 666. (Law of August 20, 1881). Every enclosure separating estates is supposed to be held jointly, unless there is only one estate which is actually enclosed, or unless there is a deed, prescription or indication to the contrary.

For ditches there is an indication that they are not held jointly when the embankment or heaping up of the earth is only on one side of the ditch.

The ditch is supposed to belong exclusively to the person on whose side the bank has been raised. Civ. C. 544, 1350, 1352.

Art. 667. (Law of August 20, 1881). A common enclosure must be kept in repair at joint expense: but

the neighbor may avoid this obligation by renouncing the joint ownership.

Such right ceases if the ditch serves usually for draining waters.

Art. 668. (Law of August 20, 1881). A neighbor whose estate adjoins a ditch or a hedge not held jointly, cannot compel the owner of such ditch or hedge to grant him a joint right thereto.

The joint owner of a hedge can destroy it up to the limit of his estate, provided he builds a wall upon such boundary.

The same rule applies to the joint owner of a ditch which is only used as an enclosure.

Art. 669. (Law of August 20, 1881). So long as the hedge is held jointly, the owners are each entitled to half of what it produces.

Art. 670. (Law of August 20, 1881). The trees which are in the hedge held jointly are also held jointly, in the same manner as the hedge. The trees planted on the line separating the two estates are also supposed to be held jointly. When they die or when they are cut or uprooted, such trees are equally divided. The fruits are gathered at joint expense and also equally divided, either when they fall naturally or when they are made to fall, or when they have been gathered.

Each owner has the right to ask that the trees held jointly be uprooted.

Art. 671. (Law of August 20, 1881). It is only allowed to keep trees, shrubs or bushes near the boundary of an adjoining estate at the distance allowed by the special regulations at present in

existence or by uniform and acknowledged customs, and if there are no such regulations or customs, at a distance of two metres from the line separating the two estates, for plantations exceeding two metres in height, and at a distance of half a metre for other plantations.

Trees, shrubs and bushes of all kinds can be grown in espalier on each side of the wall separating an estate, without having to take the distance into account, but they must not reach beyond the ridge of the wall.

If the wall is not a party wall, the owner alone has the right to grow his trees in espalier against it.

Art. 672. (Law of August 20, 1881). A neighbor can insist that the trees, shrubs or bushes planted closer than the legal distance shall be removed or cut at the height mentioned in the foregoing article, unless there is a deed or an indication given by the owner or in case of prescription of thirty years.

If the trees die or are cut or removed, the neighbor can only replace them by keeping within the legal distances.

Art. 673. (Law of February 12, 1921). A person on whose estate the branches of the neighbor's trees, shrubs and bushes reach over can compel him to cut them. The fruits which have fallen naturally from these trees belong to him.

If the roots, brambles or sprigs reach over on his estate, he has the right to cut them himself, up to the boundary line of separation.

The right to cut the roots, brambles or sprigs or to have the branches of trees, bushes or shrubs cut cannot be outlawed.

Section II.

Of Distances and Intermediary Works required for certain Constructions.

Art. 674. He who wishes to make a well or cess-pool near a wall, whether it is a party wall or not;

He who wishes to build a chimney or fire-place, a forge, an oven, or a furnace, at the same place,

To erect a stable against it,

Or to set up against it a magazine of salt or a heap of corrosive substances,

Is obliged to leave the space required by special regulations and customs applying to such things, or to do the work prescribed by said regulations and customs, so as to avoid causing the neighbor any damage. Civ. C. 552, 657, 662, 1159, 1382.

Section III.

Of the Rights to Light over the Property of a Neighbor.

Art. 675. A neighbor cannot make any kind of window or opening in a party wall, even with frames which cannot be opened, without the consent of the other neighbor. Civ. C. 651 et seq., 657, 662, 688 et seq.

Art. 676. The owner of a wall immediately adjoining the estate of another person, which is not a party wall, can make in it openings or windows with wire lattice or with frames which cannot open.

Such windows must be provided with an iron grating of which the meshes shall have an opening of not over one decimetre (about three inches and

eight lines) and with frames which cannot open. Civ. C. 654, 661.

Art. 677. These windows or openings can only be made at a height of twenty-six decimetres (eight feet) above the floor or pavement of the room to which it is intended to give light, if such room is on the ground floor, and of nineteen decimetres (six feet) above the floors on the upper stories.

Art. 678. One is not entitled to have a straight view or a false window or balconies or other such projections on the neighbor's estate, whether enclosed or not, unless there is a space of nineteen decimetres (six feet) between the wall in which they are made and the said estate. Civ. C. 552, 679 et seq., 688, 689, 690.

Art. 679. One is not entitled to have a side or oblique view on the same estate unless there is a space of six decimetres (two feet). Civ. C. 552, 680, 688, 701.

Art. 680. The distance which is mentioned in the two foregoing articles is counted from the outside facing of the wall in which the opening is made, and if there are balconies or other similar projections, from the exterior line to the line of separation of the two estates.

Section IV.

Of the Dripping of Water from Roofs.

Art. 681. Every owner must make his roofs in such a way that the rain water falls on his land or on the public highway; he cannot allow it to fall on the neighbor's estate. Civ. C. 640, 688, 690 et seq., 1382.

Section V.

Of Right of Way.

Art. 682. (Law of August 20, 1881). An owner whose estate is surrounded and who has no outlet to the public highway or only one which is insufficient for the agricultural or manufacturing working of his estate, can claim an outlet over the land of his neighbors, provided he pays an indemnity equivalent to the damage which he may occasion. Civ. C. 545, 647, 651 et seq., 683 et seq., 700 et seq., 1149, 1833.

Art. 683. (Law of August 20, 1881). The outlet must generally be made on the side where the distance from the estate surrounded to the public highway is shortest.

Nevertheless, it shall be placed at the spot which causes the least damage to the person over whose property it is allowed.

Art. 684. (Law of August 20, 1881). If an estate is surrounded because it has been divided in consequence of sale, exchange, division or any other agreement, the outlet can only be claimed over the lands forming part of these operations.

Nevertheless, when a sufficient outlet cannot be made over lands thus divided, article 682 shall apply.

Art. 685. (Law of August 20, 1881). The position and mode of easement of a right of way in case an estate is surrounded, are established by continuous use during thirty years.

A cause of action for indemnity in the case provided

by article 682 can be outlawed and the right of way can be continued, although the cause of action for indemnity no longer lies.

Chapter III.

Of Servitudes established by the Act of Man.

Section I.

Of Various Kinds of Servitudes which can be established over Property.

Art. 686. Owners have the right to establish on their estates or in favor of their estates such servitudes as they deem proper, provided, however, the burdens are not established against a person or in favor of a person, but only on the estate and for the estate and provided these burdens do not in any way interfere with public order.

The use and extent of servitudes thus established are regulated by the deed creating them; if there is no deed, by the following rules. Civ. C. 6, 544, 628 et seq., 690, 691, 692, 693, 701, 703, 704, 708, 893, 900, 1133, 1134, 1172, 1710, 1780, 2177.

Art. 687. Servitudes are established either in connection with the use of buildings or of landed estates.

Those of the first kind are called *urban* servitudes, whether the buildings to which they apply are situated in a city or in the country.

Those of the second kind are called *rural* servitudes.

Art. 688. Servitudes are either continuous or discontinuous.

Continuous servitudes are those of which the use is or may be uninterrupted without the need of any actual act of man: such as aqueducts, drains, rights of light or others of such kind.

Discontinuous servitudes are those which require a positive act of man to be made use of: such as rights of way, drawing water, right of pasturage, and others of the kind. Civ. C. 675 et seq., 689, 691, 692, 703 et seq., 2229.

Art. 689. Servitudes are apparent or non-apparent.

Apparent servitudes are those which are perceptible by exterior works, such as a door, a window, an aqueduct.

Non-apparent servitudes are those which have no exterior sign of their existence, such for example as the prohibition of building on an estate or of only building up to a fixed height. Civ. C. 675 et seq., 690 et seq., 703, 706 et seq., 1638.

Section II.

How Servitudes are established.

Art. 690. Continuous and apparent servitudes are acquired by deed or by possession of thirty years. Civ. C. 640 et seq., 688, 689, 706 et seq., 2228, 2229, 2232 et seq., 2262, 2264.

Art. 691. Continuous non-apparent servitudes and discontinuous servitudes whether apparent or not, can only be established by deed.

Possession, even from time immemorial, is not sufficient to establish them, but servitudes of this kind

already acquired by possession in countries where they could be acquired in that way, can no more be attacked. Civ. C. 2, 688 et seq., 706 et seq., 2229, 2232, 2281.

Art. 692. Destination established by the owner is equivalent to a deed as to continuous and apparent servitudes. Civ. C. 688, 689, 694.

Art. 693. Destination of the owner only exists when it is established that two estates, at present divided, belonged to the same owner and when he is the one who has placed things in the state which gave rise to the servitude. Civ. C. 705.

Art. 694. If the owner of two estates between which an apparent indication of servitude exists, disposes of one of the estates and the deed does not contain any provision relating to the servitude, it continues to exist actively and passively in favor of the estate conveyed or upon the estate conveyed. Civ. C. 692, 693, 700, 1615, 1638.

Art. 695. A deed establishing a servitude of the kind which cannot be acquired by prescription, can only be replaced by a deed acknowledging the servitude and emanating from the owner of the estate subject to the servitude. Civ. C. 690, 691, 1337 et seq.

Art. 696. When a person establishes a servitude he is supposed to grant everything that is necessary for its use.

For instance, the servitude of drawing water from another person's fountain carries necessarily with it a right of way. Civ. C. 697 et s.

Section III.

Of the Rights of the Owner of the Tenement to which the Servitude is due.

Art. 697. A person to whom a servitude is due has the right to undertake all necessary work to make use of it and to retain it. Civ. C. 696, 698, 702.

Art. 698. Such work shall be paid for by him and not by the owner of the tenement subject to the servitude, unless the deed establishing it specifies the contrary. Civ. C. 699.

Art. 699. Even in case the owner of a tenement subject to a servitude should be compelled by deed to undertake at his own expense the necessary work for the use or preservation of the servitude, he can always exempt himself from such duty by abandoning the tenement subject thereto to the owner of the tenement to which the servitude is due. Civ. C. 656.

Art. 700. If the tenement for which the servitude has been established should happen to be divided, the servitude remains due for each portion, provided the tenement subject to the servitude does not suffer any heavier burden thereby.

For instance, in case of a right of way, all the joint owners are obliged to use it at the same place. Civ. C. 682 et seq., 694, 702, 1217, 1218, 1222 et seq.

Art. 701. The owner of a tenement which owes a servitude cannot do anything which would tend to impair its use or to make it less convenient.

For instance, he cannot change the condition of the premises or transfer the use of the servitude to a

different spot from the one where such use has been originally established.

But, nevertheless, if this first designation should have become more burdensome to the owner of the tenement subject to the servitude, or if it prevents making advantageous repairs thereon, he may offer to the owner of the other tenement a more convenient spot for the use of his rights and the latter cannot refuse. Civ. C. 640, 683 et seq. 1382.

Art. 702. On the other hand a person who is entitled to a servitude can only use it in accordance with his deed, and he cannot make any changes upon the tenement which owes the servitude or upon the tenement to which it is due, which would render the position of the former more burdensome. Civ. C. 640.

Section IV.

Of the Manner in which Servitudes are extinguished.

Art. 703. Servitudes cease when things are in such a condition that they can no longer be made use of. Civ. C. 545, 617 et seq., 623 et seq., 665, 704, 1234, 1302, 1303.

Art. 704. They revive if things are reestablished in such a way that they can be made use of, unless sufficient time has elapsed to establish a presumption that the servitude has expired, as is stated in article 707. Civ. C. 665, 2177.

Art. 705. Every servitude is extinguished when the tenement to which it is due and the one which

owes it fall into the same hands. Civ. C. 617, 692 et seq., 1300 et seq., 2177.

Art. 706. A servitude is extinguished for want of use during thirty years. Civ. C. 641 et seq., 685, 690, 708 et seq., 2262, 2263, 2264, 2265.

Art. 707. The thirty years begin to run, according to the different kinds of servitudes, either from the day when one has ceased to make use of them, with respect to discontinuous servitudes, or from the day when an act contrary to the servitude has been performed with respect to continuous servitudes. Civ. C. 641 et seq., 688 et seq., 708, 709.

Art. 708. The mode of enjoyment of a servitude can be outlawed, as the servitude itself, and in the same manner. Civ. C. 706, 707, 2262.

Art. 709. If the tenement in favor of which the servitude is established belongs to several persons jointly, the enjoyment by one of them prevents prescription operating against all the others. Civ. C. 710, 815, 1199, 1206, 1217 et seq., 1222 et seq., 2249 et seq.

Art. 710. If among the joint owners there is one against whom prescription could not run, such as a minor, he keeps alive the rights of all the others. Civ. C. 2252.

BOOK THIRD

OF THE DIFFERENT WAYS OF ACQUIRING PROPERTY

General Provisions.

(Passed April 19, 1803; promulgated 29th of same month).

Art. 711. The ownership of things is acquired and transmitted by succession, by donations inter vivos or mortis causa, and by the effect of obligations. Civ. C. 544 et seq. 697 et seq., 712, 718 et seq., 893 et seq., 938, 1001 et seq., 1138.

Art. 712. Property is acquired also by accession or incorporation and by prescription. Civ. C. 546 et seq., 577, 2219 et seq., 2279.

Art. 713. Things which have no owner belong to the State. Civ. C. 539 et seq., 768.

Art. 714. There are things which belong to nobody and of which the enjoyment is common to all. Their mode of enjoyment is governed by police regulations. Civ. C. 538 et seq., 540 et seq.

Art. 715. The right to hunt or fish is generally regulated by special laws. Civ. C. 544, 714.

Art. 716. The ownership of a treasure trove be-

longs to the person who discovers it on his own property : if the treasure trove is discovered on another person's property, one half of it belongs to the finder and the other half to the owner of the property.

A treasure trove is any concealed or buried thing as to which nobody can establish any right of ownership and which is discovered by mere chance. Civ. C. 552.

Art. 717. Rights to flotsam and jetsam, of whatever nature they may be, or rights to plants and herbs which grow on the seashore, are also regulated by special laws.

The same rule applies to lost things, of which the owner does not appear. Civ. C. 539, 2279, 2280.

TITLE FIRST.

Of Successions.

(Passed April 19, 1803; promulgated 29th of same month.)

Chapter I.

Of the Opening of Successions and of the Seizin of Heirs.

Art. 718. Estates become open by natural or civil death (1). Civ. C. 23, 25 et seq., 130 et seq., 711, 719 et seq., 726.

Art. 719. (Repealed by law of May 31, 1854).

(1). Civil death was abolished by Law of May 31, 1854.

A succession becomes open by civil death from the time such death takes place in accordance with the provisions of section 2, chapter II of the title Of the Enjoyment and Loss of Civil Rights.

Art. 720. If several persons respectively entitled to each other's succession die in the same event and it is not possible to establish which one died first, the presumption of survivorship is determined by the circumstances of the case, and otherwise by their strength, age or sex. Civ. C. 1350, 1352.

Art. 721. If those who have died together were under fifteen years of age, the oldest is supposed to have survived.

If they were all over sixty years of age, the youngest is supposed to have survived.

If some were under fifteen years and others over sixty years of age, the former are presumed to have survived. Civ. C. 1350, 1352.

Art. 722. If those who have died together were over the full age of fifteen years and were less than sixty, the male is always presumed to have survived, if the ages are the same or if the difference which exists does not exceed one year.

If they were of the same sex, the presumption of survivorship which causes the succession to become open shall be followed according to the law of nature: thus the younger is presumed to have survived the older. Civ. C. 1350, 1352.

Art. 723. (Law of March 25, 1896). The law regulates the order of succession between legitimate and natural heirs. If there are none, the property passes to the surviving husband or wife, and if there

should not be any, to the State. Civ. C. 539, 713 et seq., 731 et seq., 756 et seq., 767, 768, 908, 913, 915.

Art. 724. (Law of March 25, 1896). The property, rights and causes of action of a deceased person vest absolutely in the legitimate and natural heirs, subject to the obligation on their part of satisfying all claims against the estate.

The surviving husband or wife, and the State must cause themselves to be given possession by the Courts. Civ. C. 419, 718, 723, 731 et seq., 750, 755, 769 et seq., 802 et seq., 870 et seq., 1002 et seq., 1011 et seq., 1032, 1122, 1220, 1300 et seq., 1432 et seq., 1482 et seq., 1742, 2017, 2235, 2237.

Chapter II.

Of the Qualifications Required to Inherit.

Art. 725. In order to inherit, one must necessarily exist, at the time of the opening of the succession.

Thus, are incapable of inheriting:

1° He who has not yet been conceived;

2° A child who cannot live at his birth;

3° *He who is civilly dead* (1). Civ. C. 23 et seq., 135 et seq., 312, 718 et seq., 906, 1039.

Art. 726. (Repealed by law of July 14, 1819). *An alien can only inherit the property which his French or foreign relative owns on the territory of*

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(1). Civil death was abolished by the law of 31st May, 1854.

the Kingdom, in the cases and in the manner in which a Frenchman inherits property owned by a relative in the country of such alien, in accordance with the provisions of article II of the title of the Enjoyment and Loss of Civil Rights.

Art. 727. Are unworthy of inheriting, and as such, excluded from successions:

1° He who has been found guilty of having killed or attempted to kill the decedent;

2° He who has brought against the decedent a capital accusation deemed slanderous;

3° The heir of full age who, knowing of the murder of the decedent, has not denounced it to the officials of Justice. Civ. C. 728 et seq.

Art. 728. The failure to denounce cannot be set up against the ascendants or descendants of the murderer, nor his connections by marriage of the same degree, nor the husband or wife, brothers or sisters, uncles or aunts, nephews or nieces.

Art. 729. An heir who is excluded from a succession, on account of unworthiness, is obliged to return any income and revenue of which he has had the enjoyment, since the opening of the estate. Civ. C. 549, 583 et seq.

Art. 730. The children of the unworthy person who are entitled to the succession in their own behalf, and not through representation, are not excluded on account of their father's offense; but the latter cannot in any case claim, over the property of the succession, the usufruct which the law grants to fathers and mothers over the property of their children. Civ. C. 384 et seq. 739 et seq., 787.

Chapter III.

Of Various Kinds of Successions.

Section I.

General Provisions.

Art. 731. Successions belong to the children and descendants, the ascendants, and the collateral relatives of a decedent, in the order and according to the rules hereafter laid down. Civ. C. 723 et seq., 733 et seq., 745 et seq., 768, 910.

Art. 732. The law does not take into consideration the nature or origin of property, in regulating a succession. Civ. C. 351 et seq., 745 et seq., 752 et seq., 766, 896 et seq.

Art. 733. Every succession accruing to ascendants or to collaterals is divided into two equal parts: one for the relatives in the paternal line, the other for those in the maternal line.

The relatives of half blood in the maternal line or in the paternal line are not excluded by the relatives of full blood; but they only take in their line, with the exception of what is stated in article 752. The relatives of full blood take in both lines.

There is no devolution from one line to the other, unless there is no ascendant or collateral in one of the two lines. Civ. C. 734 et seq., 746 et seq., 755.

Art. 734. After this first division between the paternal and maternal lines, no other is made between the various branches; but the half accruing to each line belongs to the nearest heir or heirs, according to their degree, except in case of representation, as shall be hereafter stated. Civ. C. 735, 739, 743, 755.

Art. 735. The proximity of relationship is established by the number of generations; each generation is called a *degree*. Civ. C. 736.

Art. 736. The series of degrees forms the *line:* the series of degrees between persons descending one from the other is called the *direct line;* the *collateral line* is the series of degrees between persons not descending one from the other, but who descend from a common progenitor.

The direct line is divided into the descending direct line and the ascending direct line.

The first is that which connects the progenitor with those descending from him; the second is that which connects a person with those from whom he descends.

Art. 737. In the direct line, as many degrees are counted as there are generations between the persons; thus, a son is, with respect to his father, in the first degree; a grandson in the second; and vice versa the father and grandfather with respect to sons and grandsons.

Art. 738. In the collateral line, degrees are counted by the generations from one of the relatives to and exclusive of the common progenitor and from the latter to the other relative.

Thus, two brothers are related in the second degree; uncle and nephew in the third degree, first cousins in the fourth degree, and so on. Civ. C. 755.

Section II.

Of Representation.

Art. 739. Representation is a fiction of the law, of which the effect is to have the representatives take

the place, the degree and the rights of the person whom they represent. Civ. C. 730, 734, 750, 759, 787, 848.

Art. 740. Representation takes place without limitation in the descending direct line.

It is admitted in all cases, whether the children of the deceased take with the descendants of a predeceased child or whether, all the children of the decedent having died before him, the descendants of said children are of equal or unequal degrees between each other. Civ. C. 730, 735 et seq., 743 et seq., 745 et seq., 759, 1051.

Art. 741. Representation does not take place in favor of ascendants; the nearest in each of the two lines always excludes the one who is more remote. Civ. C. 735 et s., 746 et seq.

Art. 742. In the collateral line, representation is admitted in favor of children and descendants of brothers or sisters of the decedent, whether they come to the succession together with uncles or aunts, or whether, all the brothers and sisters of the decedent having died before him, the succession devolves upon their descendants of equal or unequal degree. Civ. C. 750 et seq.

Art. 743. In all cases in which representation is admitted, the division takes places "per stirpes"; if the same branch has produced several sub-branches, the subdivision also takes place "per stirpes" in each branch, and the members of the same branch share between themselves "per capita". Civ. C. 733 et seq., 753, 815 et seq.

Art. 744. There is no representation of living

persons, but only of those who have died, naturally or civilly (1).

He who has renounced the succession of a person can still represent him. Civ. C. 23 et seq., 25, 135 et seq., 727, 730, 750, 784 et seq.

Section III.

Of Successions devolving upon Descendants.

Art. 745. Children or their descendants inherit from their father and mother, grandfathers and grandmothers and other ascendants, without distinction of sex and primogeniture, and even if born of different marriages.

They inherit in equal shares and "per capita" when they are all in the first degree and take in their own right: they inherit "per stirpes" when all or some of them take by representation. Civ. C. 312, 333, 350, 724, 731 et seq., 735 et seq., 739 et seq., 756 et seq., 913 et seq., 930 et seq., 1048 et seq.

Section IV.

Of Estates falling to Ascendants.

Art. 746. If a decedent has left no issue, no brothers or sisters or descendants of them, the succession is divided equally between the ascendants of the paternal line and the ascendants of the maternal line.

The ascendant who is in the nearest degree takes the half allotted to his line, to the exclusion of all others.

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(1). Civil death was abolished by the law of May 31, 1854.

The ascendants in the same degree inherit "per capita". Civ. C. 724, 731 et seq., 733 et seq., 737 et seq., 741 et seq., 747 et seq., 750 et seq., 753, 765, 915.

Art. 747. Ascendants inherit, to the exclusion of all others, all articles given by them to their children or descendants who have died without issue, when the articles given are found in kind in the succession.

If the articles have been sold, the ascendants take the proceeds which may be due. They also inherit the cause of action for restitution which the donee might have had. Civ. C. 351 et seq. 766, 951 et seq.

Art. 748. When the father and mother of a person who has died without issue survive him, and he leaves brothers and sisters or descendants of them, the succession is divided into two equal portions, of which one only devolves upon the father and mother, who share it between themselves equally.

The other portion belongs to the brothers and sisters or their descendants, as shall be explained in section 5 of the present chapter. Civ. C. 733, 751, 815.

Art. 749. In case a person who has died without issue leaves brothers and sisters or descendants of them, and the father and mother have died before him, the portion which would have devolved upon such father and mother, according to the previous article, is added to the half which belongs to the brothers and sisters or their representatives, as shall be explained in section 5 of the present chapter. Civ. C. 751 et seq.

SECTION V.

OF COLLATERAL SUCCESSIONS.

Art. 750. In case of the previous decease of the father and mother of a person who has died without issue, his brothers and sisters or their descendants are called to the succession, to the exclusion of the ascendants or other collateral relatives.

They inherit either in their own right or by representation, as is provided in section II of the present chapter. Civ. C. 731 et seq., 738, 742 et seq., 752, 766, 787.

Art. 751. If the father and mother of the person who has died without issue have survived him, his brothers and sisters or their representatives are only entitled to one-half of the succession. If only the father or mother survives, they are entitled to take three-quarters. Civ. C. 748 et seq., 766.

Art. 752. The division of the half or of the three-quarters belonging to the brothers and sisters, according to the provisions of the previous article, is made between them in equal portions, if they are all of the same marriage; if they are of different marriages, the division is made equally between the two paternal and maternal lines of the decedent: those of full blood take in both lines and those on the mother's or the father's side each take in their line only; if there are only brothers or sisters on one side, they inherit the whole, to the exclusion of all relatives in the other line. Civ. C. 733 et seq., 738, 742.

Art. 753. If there are no brothers or sisters or descendants of them, and no ascendants in one or the

other line, one-half of the succession devolves upon the surviving ascendants; and the other half upon the nearest relatives in the other line.

If several collateral relatives in the same degree take concurrently they share "per capita". Civ. C. 733 et seq., 735, 746, 754.

Art. 754. In the case mentioned in the foregoing article, the father or mother who survives has the usufruct of a third of the property which he or she does not inherit in full ownership. Civ. C. 384 et seq., 578 et seq., 915.

Art. 755. (Law of December 31, 1917). Collateral relatives beyond the sixth degree do not inherit, with the exception nevertheless of the descendants of the brothers and sisters of the decedent. However, collaterals up to the twelfth degree inherit when the decedent was not able to make a will or was under legal interdiction.

If there are no relatives in a line of a degree entitling them to inherit, the relatives in the other line inherit the whole. Civ. C. 733 et seq.

Section VI.

Of Successions devolved upon Natural Children legally acknowledged and of the Rights of their Father and Mother in their Estates.

Art. 756. (Law of March 25, 1896). The law only grants rights to natural children in the estate of their deceased father or mother when they have been lawfully acknowledged. Natural children lawfully acknowledged are entitled as heirs to the estate of their deceased father or mother. Civ. C. 331 et seq., 334 et seq., 723, 724, 757 et seq., 767 et seq., 908, 913.

Art. 757. (Law of March 25, 1896). The law does not grant natural children any rights to the property of relatives of their father or mother. Civ. C. 331 et seq.

Art. 758. (Law of March 25, 1896). The right of inheritance of the natural child in the estate of his father or mother is regulated as follows:

If the father or mother has left legitimate descendants, this right is to one half of the hereditary portion which he would have taken if he had been legitimate. Civ. C. 745, 750 et seq., 759 et seq., 762, 908, 913.

Art. 759. (Law of March 25, 1896). The right is to three-fourths, when the father or mother leaves no descendants but only ascendants or brothers or sisters, or legitimate descendants of brothers or sisters. Civ. C. 750 et seq., 758, 762, 908, 913.

Art. 760. (Law of March 25, 1896). The natural child is entitled to all the property, when his father or mother leaves no descendants, no ascendants, no brothers or sisters, no legitimate descendants of brothers or sisters. Civ. C. 750 et seq., 758 et seq., 762, 908, 913.

Art. 761. (Law of March 25, 1896). In case of predecease of natural children, their children and descendants can claim the rights mentioned in the foregoing articles. Civ. C. 739 et seq., 745, 756 et seq.

Art. 762. (Law of March 25, 1896). The provisions of articles 756, 758, 759 and 760 do not apply to adulterous or incestuous children.

The law only grants them nourishment. Civ. C. 208 et seq., 335, 763 et seq.

Art. 763. (Law of March 25, 1896). Such nourishment is allowed according to the means of the father and mother and to the number and relationship of the legitimate heirs. Civ. C. 208 et seq., 762, 764.

Art. 764. (Law of March 25, 1896). When the father or mother of an adulterous or incestuous child has made him learn a mechanical trade, or when one of them has provided for his nourishment during his lifetime, the child cannot set up any claim against their succession. Civ. C. 762 et seq.

Art. 765. The succession of a natural child who has died without issue goes to the father or mother who has acknowledged him, or equally to both if he has been acknowledged by both of them. Civ. C. 334 et seq., 746 et seq., 766.

Chapter IV.

Of Irregular Successions.

Section I.

Of the Rights of Brothers and Sisters to the Property of Natural Children.

Art. 766. (Law of March 25, 1896). In case of the previous decease of the father and mother of a natural child who has died without issue, the property which he has received from them goes to his legitimate brothers and sisters, if such property is found

in kind in the succession : the causes of action for restitution, if they exist, or the proceeds of property conveyed, if they are still due, revert also to the legitimate brothers and sisters. All the other property goes to the natural brothers and sisters or to their descendants. Civ. C. 351 et seq., 747, 750 et seq., 951 et seq.

Section II.

Of the Rights of the Surviving Husband or Wife and of the State.

Art. 767. (Law of March 9, 1891). When the decedent leaves no relatives of a degree entitling them to inherit, and no natural children, the property of the succession belongs absolutely to the surviving husband or wife not divorced and against whom no judgment of separation from bed and board has become final.

(Law of April 26, 1925). The surviving husband or wife not divorced who does not inherit the full ownership and against whom no judgment of separation from bed and board has become final has upon the succession of the predeceased one a right of usufruct which is :

Of one-quarter, if the decedent leaves one or several children born of the marriage:

Of the smallest portion of a legitimate child, which portion shall not exceed one-quarter, if the decedent has children born of a previous marriage;

Of one-half if the decedent leaves natural children or lawful issue of natural children, brothers and sisters, descendants of brothers and sisters or ascendants.

Of the whole in all other cases, whatever may be the number and the relationship of the heirs.

The calculation shall be based upon a total composed of all the property existing at the death of the decedent, to which shall be fictitiously added the property which he has disposed of, either by instrument inter vivos or by will, in favor of persons entitled to inherit, not exempt from collation.

But the surviving husband or wife can only exercise his or her right against the property which the decedent has not disposed of by instrument inter vivos or by will, and without prejudice to the rights to the reserve and the rights of reversion.

He or she shall cease to exercise such right if he or she has received from the decedent advantages, even made by preciput and above the share, of which the amount is equal to the rights which the present law grants to him or her, and should such amount not be reached, he or she can only claim what is missing to complete his or her usufruct.

Until the final division, the heirs can, upon giving sufficient security, insist that the usufruct of the surviving husband or wife be changed into a life annuity of equivalent amount. If they disagree, the Courts may in their discretion order such conversion.

(Repealed by law of April 3, 1917). *In case of a new marriage, the usufruct of the husband or wife ceases, if there are descendants of the decedent. Civ. C.* 140, 201 *et seq.*, 205, 337, 723 *et seq.*, 755 *et seq.*, 769 *et seq.*

Art. 768. If there is no surviving husband or wife, the succession goes to the State. Civ. C. 539, 713, 723, 724, 731, 767, 769 et seq.

Art. 769. A surviving husband or wife and the administration of Domains, when claiming to be entitled to an estate, are bound to have seals affixed and to cause an inventory to be made in the manner required for the acceptance of successions, under benefit of inventory. Civ. C. 794 et seq.

Art. 770. They must ask to be placed in possession by the Tribunal of First Instance of the district in which the succession becomes open. The Tribunal can only pass upon the application, after three publications and notices in the usual manner, and after the King's attorney (*Republic's attorney*) has been heard. Civ. C. 110, 114, 822.

Art. 771. The surviving husband or wife is also obliged to invest the personal property and to give sufficient security to ensure its return, in case heirs of the decedent should present themselves within a period of three years: after such period the surety is discharged. Civ. C. 789, 805, 2040 et seq., 2262.

Art. 772. The surviving husband or wife or the Administration of Domains can be ordered to pay damages to the heirs, if any present themselves, when they have not complied with the formalities which are respectively required of them. Civ. C. 1149.

Art 773. (Repealed by law of March 25, 1896). *The provisions of Articles* 769, 770, 771, *and* 772 *apply to natural children who take when there are no parents.*

CHAPTER V.

OF THE ACCEPTANCE AND REPUDIATION OF SUCCESSIONS.

SECTION I.

OF ACCEPTANCE.

Art. 774. A succession can be accepted unconditionally or subject to benefit of inventory. Civ. C. 775 et seq., 788 et seq., 790, 793 et seq., 1413, 1416 et seq.

Art. 775. No one is obliged to accept a succession which comes to him. Civ. C. 784, 789.

Art. 776. Married women cannot lawfully accept a succession without the consent of their husband or of the Court, in accordance with the provisions of chapter VI of the title *Of Marriage.*

Successions accruing to minors or to interdicted persons can only be lawfully accepted in accordance with the provisions of the title *Of Minority, Guardianship and Emancipation.* Civ. C. 217 et seq., 461 et seq., 484, 509, 934.

Art. 777. The effect of acceptance extends back to the date of the opening of the succession. Civ. C. 718 et seq., 785, 790, 883.

Art. 778. Acceptance can be express or tacit: it is express when one assumes the title or status of heir in a public or private instrument: it is tacit when the heir does an act which necessarily supposes his intention of accepting and which he only has the right to do, in his capacity as heir. Civ. C. 779 et seq., 789 et seq., 792, 796, 801, 1317 et seq., 1454 et seq.

Art. 779. Acts of simple preservation, supervision

and provisional administration are not acts of acceptance of an inheritance, unless the title or status of heir has been assumed. Civ. C. 796, 1372 et seq., 1454.

Art. 780. A donation, sale or assignment of his hereditary rights by one of the co-heirs, either to a stranger or to all his co-heirs or to some of them implies on his part acceptance of the succession.

The same shall be implied: 1° From the renunciation, even without consideration, made by one of the heirs in favor of one or several of his co-heirs;

2° From the renunciation made by him even in favor of all his co-heirs, without distinction when he receives the price of this renunciation. Civ. C. 778, 784, 792, 894, 1696.

Art. 781. When a person to whom a succession accrues has died without having repudiated it, or without having accepted it expressly or tacitly, his heirs can accept it or repudiate it in his stead. Civ. C. 774, 778, 784, 1014.

Art. 782. If such heirs do not agree as to accepting or repudiating the succession, it must be accepted under benefit of inventory. Civ. C. 793 et seq., 1475.

Art. 783. A person of full age can only attack the express or tacit acceptance made by him of a succession, when the acceptance is the result of fraud committed upon him: he can never raise objections on the ground that he has suffered a loss, unless the succession is absorbed or reduced more than one-half by the discovery of a will unknown at the time of the acceptance. Civ. C. 461, 488, 1109 et seq., 1116 et seq., 1118, 1305 et seq., 1313.

SECTION II.

OF RENUNCIATION OF SUCCESSIONS.

Art. 784. Renunciation of a succession cannot be presumed : it can only be made at the clerk's office of the Tribunal of First Instance in the district in which the succession becomes open, in a special register kept for that purpose. Civ. C. 110, 461 et seq., 484, 509, 780 et seq., 785, 795, 845, 848, 1457.

Art. 785. The heir who renounces is considered as if he had never been an heir. Civ. C. 777, 788 et seq., 845.

Art. 786. The share of the heir who renounces accrues to his co-heirs: if he is alone, it accrues to those in the next degree. Civ. C. 136, 731 et seq., 790, 1044 et seq.

Art. 787. One can never take by representation of an heir who has renounced: if the person renouncing is the only heir of his degree, or if all his co-heirs renounce, the children come in their own right and inherit per capita. Civ. C. 730, 739 et seq., 744.

Art. 788. The creditors of the one who renounces to the detriment of their rights, can apply to be authorized by the Court to accept the estate in behalf of their debtor or in his place and stead.

In such case the renunciation only becomes ineffective as regards the creditors and to the extent only of their claims; it is not set aside as regards the heir who has renounced. Civ. C. 622, 820, 1053, 1122, 1166 et seq., 1464, 2093, 2225.

Art. 789. The right to accept or renounce a succession is outlawed by the length of time required for

the longest prescription applying to rights to real estate. Civ. C. 790, 2225, 2262.

Art. 790. So long as prescription of the right to accept has not taken place against the heirs who have renounced, they still have the right to accept the succession, if it has not already been accepted by other heirs; without prejudice, nevertheless, to the rights which third parties may have acquired to the property of the succession, either by prescription or by a valid instrument entered into between them and the curator of the vacant succession. Civ. C. 462, 477, 811 et seq., 2252, 2258, 2262, 2265 et seq.

Art. 791. One cannot, even by marriage contract, renounce the succession of a person living, or convey prospective rights which one may have to such succession. Civ. C. 6, 761, 900, 918, 1082, 1084, 1093, 1130, 1133, 1172, 1387, 1389, 1600.

Art. 792. Heirs who have converted or concealed things forming part of a succession lose the right to renounce it: they remain heirs out and out, notwithstanding their renunciation, without having the right to claim any part of the things converted or concealed. Civ. C. 778, 780 et seq., 801, 1310, 1460, 1477.

Section III.

Of Benefit of Inventory, its Effects, and the Obligations of the Beneficiary.

Art. 793. The declaration of an heir that he only intends to assume that capacity under benefit of inventory must be made at the clerk's office of the Civil Tribunal of First Instance in the district in which the succession becomes open: it must be recorded in the

register intended to receive the deeds of renunciation. Civ. C. 110, 774, 784 et seq., 794 et seq., 1456.

Art. 794. Such declaration does not produce any effect unless it has been preceded or followed by a true and full inventory of the property of the succession, made in the manner prescribed by the laws of procedure and within the time which shall be hereafter specified. Civ. C. 795 et seq., 1414 et seq.

Art. 795. An heir has three months from the day of the opening of the succession to make the inventory.

He also has a period of forty days to decide whether he will accept or renounce, which shall commence to run from the day of the expiration of the three months allowed for the inventory or from the day of the closing of the inventory, if it is finished before the three months. Civ. C. 774 et seq., 784, 797 et seq., 800, 1414, 1442, 1456 et seq.

Art. 796. If, however, there are articles in the succession which are liable to depreciate or which are costly to keep, the heir, in his capacity of being entitled to inherit, and without acceptance on his part being presumed, can apply to the Court for leave to have such articles sold.

The sale shall be conducted by a public officer after giving the notices and making the publications required by the laws of procedure. Civ. C. 779, 805.

Art. 797. During the continuance of the time allowed to make the inventory and to deliberate, the heir cannot be compelled to take that stand and no judgment can be obtained against him : if he renounces when the period has expired, or before, the expenses which he has legitimately incurred up

to that time shall be paid by the succession. Civ. C. 798 et seq., 810, 2146, 2259.

Art. 798. After the expiration of the period aforesaid, the heir can, in case proceedings are brought against him, ask for a new extension of time, which the Tribunal before which the controversy is brought shall grant or refuse according to circumstances. Civ. C. 795, 1458.

Art. 799. The costs of the proceedings in the case mentioned in the foregoing article shall be paid by the succession, if the heir establishes either that he had no knowledge of the death or that the time allowed has been insufficient, either on account of the location of the property or on account of controversies which have arisen: if he does not make such proof, he remains personally liable for the costs.

Art. 800. The heir, nevertheless, after the expiration of the periods granted by article 795, and even of those allowed by the Judge in accordance with article 798, still retains the right to make an inventory and to become beneficiary heir, if he has not otherwise acted as heir, or if no final judgment exists against him declaring that he is purely and simply an heir. Civ. C. 778 et seq., 793 et seq., 1350 et seq.

Art. 801. An heir who has been guilty of concealing things or who has knowingly and in bad faith neglected to include in the inventory things belonging to the succession forfeits the benefit of inventory. Civ. C. 778, 792, 794, 1310, 1360, 1460, 1477, 2268.

Art. 802. The effect of the benefit of inventory is to give the heir the advantage :

1° Of only being obliged to pay the debts of the succession to the extent of the value of the property which he has received, and even of being able to exonerate himself from paying the debts by abandoning to the creditors or legatees all the property composing the succession.

2° Of not mixing his own individual property with the property of the succession, and of retaining against the succession the right to ask for payment of his claims. Civ. C. 724, 873, 875, 1251, 1265 et seq., 1300 et seq., 2146, 2258.

Art. 803. A beneficiary heir has charge of the administration of the property of the succession and must render an account of his administration to the creditors and legatees.

His personal property cannot be reached until he has been summoned to present his account and has failed to satisfy this obligation.

After approval of his account, he can only be compelled to make payments out of his personal property to the extent of the balance which he may hold. Civ. C. 873, 1137.

Art. 804. He is only liable for gross negligence in the administration of which he has charge. Civ. C. 1137, 1392, 1992.

Art. 805. He can only sell the personal property of the succession through a public officer at public sale and after the usual notices and publications.

If he produces the personal property in kind, he is only responsible for the depreciation or deterioration caused by his negligence. Civ. C. 779, 796 et seq., 807, 1383.

Art. 806. He can only sell the real estate in the manner provided by the rules of procedure: he is obliged to transfer the proceeds to the mortgagees who make themselves known. Civ. C. 807, 2114 et seq., 2166, 2184, 2218.

Art. 807. He is obliged, if the creditors or other interested persons require it, to give good and sufficient security for the value of the personal property contained in the inventory and for the portion of the proceeds of the real estate not transferred to the mortgagees.

In case he should fail to give such security, the personal property is sold and the proceeds are deposited, together with the portion of the proceeds of the real estate not used, for the purpose of settling the liabilities of the succession. Civ. C. 805 et seq., 2040 et seq.

Art. 808. If any creditors have issued attachments, the beneficiary heir can only pay in the order and manner fixed by the Judge.

If there are no attaching creditors, he pays the creditors and the legatees, as they present themselves. Civ. C. 809, 2093 et seq., 2166 et seq.

Art. 809. Creditors who have not attached and who only appear after the approval of the account and the payment of the balance, can only exercise their remedies against the legatees.

In both cases the remedy is outlawed at the end of three years from the day of the approval of the account and of the payment of the balance. Civ. C. 803, 808, 1009, 1012, 1017, 1020, 1024, 2111, 2219 et seq.

Art. 810. The expenses for putting on the seals, if

any have been affixed, those of the inventory and of the accounting, shall be paid by the succession. Civ. C. 797 et seq., 2001.

Section IV.

Of Vacant Successions.

Art. 811. When, after the expiration of the period to make the inventory and to deliberate, no one appears to claim a succession and there is no known heir, or if the heirs who are known have renounced such succession, it is deemed to be vacant. Civ. C. 539, 784, 793, 795, 812 et seq., 2258.

Art. 812. The Tribunal of First Instance of the district in which the succession has become open appoints a curator upon the application of the interested persons or upon the requisition of the King's attorney (*Republic's attorney*). Civ. C. 110.

Art. 813. The curator of a vacant succession is obliged first of all to establish what it consists of by making an inventory: he exercises and enforces its rights: he defends it against all claims brought against it: he administers the succession with the obligation of depositing the funds forming part of the same together with the proceeds and cash of the sales of the personal or real estate in the hands of a Receiver of the Royal (*National*) Excise office, for the preservation of its rights and with the obligation of rendering accounts to whomsoever it may belong. Civ. C. 803 et seq., 814.

Art. 814. The provisions of section 3 of the present chapter relating to the form of inventories, the mode of administration, and the accounts to be

rendered by the beneficiary heir, apply, moreover, to curators of vacant successions. Civ. C. 794 et seq., 803 et seq., 808 et seq.

Chapter VI.

Of Division and Collations.

Section I.

Of Partition Suits and of their Form.

Art. 815. No one can be compelled to hold undivided property and a division can always be sought, notwithstanding prohibitions and agreements to the contrary.

An agreement can, however, be made to delay the division for a limited time: such agreement cannot be made binding for more than five years, but it can be renewed. Civ. C. 6, 724, 822 et seq., 900, 1075 et seq., 1133, 1172, 1476, 1686 et seq., 1871 et seq., 2103, 2109, 2205.

Art. 816. A division may be applied for, even when one of the heirs has had the separate enjoyment of a part of the property of the succession, if the division has not been made by a deed, or unless possession has lasted long enough to bring about prescription. Civ. C. 2219, 2228, 2229, 2262.

Art. 817. (Law of December 15, 1921). An action for division, when there are heirs who are minors or are interdicted, can be brought by their guardians specially authorized by the family council.

Such authorization is not necessary when the partition suit is brought upon the collective complaint of all the interested parties.

The right of action belongs to the relatives who have been placed in possession, as regards the co-heirs who are absent. Civ. C. 113, 120 et seq., 130, 136, 465 et seq. 482, 509, 513, 776, 819 et seq., 838 et seq., 1687.

Art. 818. A husband may, without his wife's concurrence, apply for the division of the personal or real property coming to her which falls into the community: as to the things which do not fall into the community, the husband cannot demand the division thereof, without the co-operation of his wife: he can only, if he is entitled to the enjoyment of her property, ask for a temporary division.

The co-heirs of the wife can only ask for a final division by making the husband and wife parties to the suit. Civ. C. 215, 217, 776, 1401, 1421 et seq., 1428, 1449, 1531 et seq., 1536 et seq., 1549 et seq., 1558, 1576.

Art. 819. If all the heirs are present and of full age, the affixing of seals on the property of the succession is not necessary, and the division may be made in such manner and by virtue of such instruments as the interested parties deem proper.

If all the heirs are not present, or if there are minors or interdicted persons among them, seals must be affixed as soon as possible, either at the request of the heirs or upon the requisition of the King's attorney (*Republic's attorney*) of the Tribunal of First Instance, or of his own accord by the Justice of the Peace of the district in which the succession

becomes open. Civ. C. 110, 113 et seq., 136, 838 et seq., 1031, 1034.

Art. 820. Creditors can also ask that seals be affixed by virtue of an instrument entitling them to issue execution, or by order of the Judge. Civ. C. 788, 877 et seq., 1166 et seq., 2205.

Art. 821. When seals have been affixed, any creditor may enter a caveat, even if he has no right to issue execution or has no order of a Judge.

The formalities for removal of the seals and making the inventory are regulated by the laws of procedure.

Art. 822. (Law of March 15, 1928). The action for division and the controversies arising during the proceedings must be submitted to the Tribunal of the place where the succession becomes open, under penalty of annulment: it is before that Tribunal that the judicial sales are made and that the suits relating to the warranty of the shares between coparceners and those of which the purpose is to have a division rescinded must be brought. If an attempt to reconcile the parties should be made as prescribed in article 48 of the Code of Civil Procedure, the Justice of the Peace of the place where the succession opens has sole jurisdiction, under penalty of annulment.

(Law of December 15, 1921). If all the parties agree, the Tribunal may take cognizance of the suit for division, upon a collective petition signed by their solicitors. If a sale at auction is necessary, the petition shall mention a starting price which will serve as an estimate. In such a case the judgment is given in the Judges' Chamber and no appeal can be taken, provided the findings of the petition are accepted

by the Tribunal without amendments. Civ. C. 110, 770, 784, 793, 815, 883 et seq., 887 et seq., 1686 et seq.

Art. 823. If one of the co-heirs refuses to consent to the division, or if controversies arise either as to the manner of proceeding or the way of terminating such division, the Tribunal adjudicates as in an urgent case and appoints, if necessary for the proceedings of the division, one of the Judges, upon whose report it decides the controversies. Civ. C. 404 et seq.

Art. 824. The valuation of the real estate is made by experts chosen by the interested parties, or, in case of their refusal, such experts are appointed by the Court, of its own accord.

The official report of the experts must give the basis of the valuation: it must indicate whether the thing appraised can be conveniently divided; in what way: finally, in case of division, it must fix each share that can be formed and its value. Civ. C. 466, 826, 828, 831 et seq., 872.

Art. 825. The valuation of the personal property, if the regular inventory contains no estimate, must be made by experienced persons, at the true price and without increase. Civ. C. 868.

Art. 826. Each one of the co-heirs can claim his share of the personal or real estate of the succession in kind: nevertheless, if there are creditors who have attached or who have entered caveats, or if the majority of the heirs deems that a sale is necessary for the payment of the debts and liabilities of the succession, the personal property shall be sold publicly in the usual manner.

Art. 827. If the real estate cannot be conveniently

divided, a judicial sale must take place before the Tribunal.

Nevertheless, the parties, if they are all of full age, can consent that the judicial sale be conducted before a notary, selected by them by mutual agreement. Civ. C. 819, 839, 1686 et seq.

Art. 828. After the personal and real property has been appraised and sold, the Judge appointed sends, if necessary, the parties before a notary, agreed upon by them or whom he names of his own accord, if the parties do not agree upon the choice of such notary.

An account is drawn up before such official of what the parties owe each other, of the general assets, of how the shares are to be made up and of what each coparcener is to receive. Civ. C. 466,872.

Art. 829. Each co-heir returns to the succession, according to the rules which are hereafter laid down, the donations which have been made to him and the sums which he owes. Civ. C. 760, 830 et seq., 843 et seq., 851 et seq., 918 et seq., 1468 et seq., 1573.

Art. 830. If the return is not made in kind, the heirs to whom it is due take an equivalent amount out of the bulk of the succession.

The returns are made as much as possible from things of the same kind, quality and value as those not returned in kind. Civ. C. 826, 858 et seq., 865.

Art. 831. After such returns are effected, what remains of the bulk of the estate is divided into as many equal shares as there are heirs or branches taking part in the division. Civ. C. 733 et seq., 739 et seq., 745 et seq.

Art. 832. All possible care shall be taken in forming and making up the shares, so as to avoid cutting up the estate and dividing businesses and it shall be sought to include in each share, if possible, the same quantity of personal and real property, and of rights or claims of the same nature and value. Civ. C. 826, 833, 866, 872, 1220, 1686 et seq.

Art. 833. Any inequality in the shares in kind is compensated by a return made either by way of an annuity or in cash. Civ. C. 2103, 2109.

Art. 834. The shares are made up by one of the heirs, if they can agree between themselves as to his selection, and if the one chosen accepts to act: otherwise the shares are made up by an expert whom the Judge appointed names.

Thereafter the lots are drawn. Civ. C. 835.

Art. 835. Before drawing the lots each coparcener is entitled to present his objections, as to their formation. Civ. C. 837.

Art. 836. The rules established for the division of the bulk of the estate shall also be followed in the subdivisions to be made between the branches taking part in the division. Civ. C. 733 et seq., 739 et seq., 745 et seq.

Art. 837. If, in the proceedings carried on before a notary, any disagreement arises, the notary shall draw up an official report of the controversies and respective objections of the parties, and shall send such parties before the Judge appointed for the division : and in other respects the rules of procedure specified by law shall be followed. Civ. C. 822 et seq., 828.

Art. 838. If all the heirs are not present, or if among them, there are interdicted persons or minors, even emancipated, the division shall take place before the Court in accordance with the rules laid down in article 819 and the following, up to and including the foregoing article. If there are several minors having adverse interests in the division, a special and distinct guardian shall be given to each of them. Civ. C. 113, 457 et seq., 465 et seq., 509.

Art. 839. If a judicial sale is necessary under the circumstances mentioned in the foregoing article, it can only take place before the Court and in accordance with the rules specified for the conveyance of property of minors. Outsiders are always admitted. Civ. C. 457 et seq., 509, 827 et seq., 1686 et seq.

Art. 840. Divisions made in accordance with the rules above provided, either by guardians with the consent of the family council or by emancipated minors with the assistance of their curators, or in the name of absentees or persons not present, shall be final: they shall only be temporary if the rules specified have not been followed. Civ. C. 113, 406 et seq., 457 et seq., 465 et seq., 481 et seq., 509, 819 et seq., 1125, 1314.

Art. 841. Any person, even related to the decedent, who is not entitled to inherit and to whom a co-heir may have assigned his right to inherit, can be excluded from the division, either by all the co-heirs or by one of them, by returning to him the amount paid upon the assignment. Civ. C. 780, 889, 1689 et seq.

Art. 842. After the division, each heir shall receive the special deeds appertaining to the property which he takes.

The title-deeds of property which has been divided shall remain with the one who has the largest portion, with the obligation for him to assist those of his coparceners who are interested therein, when he is requested so to do.

The title-deeds relating to the whole estate shall be delivered to the one whom all the heirs have chosen to receive them on deposit, with the obligation to help the coparceners whenever requested. If there is any difficulty in making such selection, the Judge selects the person.

Section II.

Of Collations.

Art. 843. (Law of March 24, 1898). Every heir, even a beneficiary heir, sharing in a succession shall return to his co-heirs everything he has received from the decedent, directly or indirectly, by donation inter vivos: he cannot keep the donations made to him by the decedent, unless these donations have been made expressly by preciput and above his share or with exemption from collation.

The legacies made to an heir are considered made by preciput and above his share unless the testator has expressed his wish to the contrary, in which case the legatee can only claim his legacy by taking less. Civ. C. 760, 829 et seq., 844, 845, 918, 919, 1468 et seq., 1573.

Art. 844. (Law of March 24, 1898). Donations made by preciput or with exemption from collation cannot be retained, nor can the legacies be claimed by the heir sharing in the division, except to the extent of the portion which can be disposed of: the excess is subject to collation. Civ. C. 913 et seq., 919.

Art. 845. An heir who renounces a succession can nevertheless retain the donation inter vivos or claim the legacy made to him to the extent of the portion which can be disposed of. Civ. C. 784 et seq., 857, 913 et seq., 924.

Art. 846. A donee who was not a presumptive heir at the time of the donation, but who inherits at the time of the opening of the succession, is also bound to collate, unless the donor has exempted him therefrom. Civ. C. 843, 919.

Art. 847. Donations and legacies made to the son of a person who is a successor at the time of the opening of the succession, are always supposed to be made with exemption from collation.

A father coming to the succession of the donor is not obliged to collate them. Civ. C. 848, 857, 919, 1350 et seq.

Art. 848. Likewise, a son coming in his own right to the succession of the donor is not obliged to collate the donation made to his father, even if he has accepted the latter's succession; but if the son only comes by representation, he must collate what has been given to his father, even if he has repudiated his succession. Civ. C. 739 et seq., 774 et seq., 784 et seq.

Art. 849. Donations and legacies made to the husband or wife of a person who inherits are considered as having been made with exemption from collation.

If the donations and legacies are made jointly to a husband and wife of whom only one inherits, this one collates the half: if the donations are made to a

husband or wife who inherits, he or she collates the whole. Civ. C. 857, 1350 et seq.

Art. 850. Collation is only due to the succession of the donor. Civ. C. 857, 1438 et seq.

Art. 851. Collation is due for what has been contributed for the establishment of one of the co-heirs, or for the payment of his debts. Civ. C. 204, 917 et seq., 1375, 1573.

Art. 852. The expenses of support, maintenance, tuition, apprenticeship, the ordinary expenses of military equipment, those of weddings and usual gifts, shall not be collated. Civ. C. 203, 853 et seq.

Art. 853. The same rule applies to the profits which the heir may have made out of the agreements entered into with the decedent, if these agreements did not confer any indirect advantage when they were made. Civ. C. 854, 911, 913 et seq., 918, 1099 et seq., 1516, 1525.

Art. 854. Likewise, no collation is due for co-partnerships entered into without fraud between the decedent and one of his heirs, when the conditions thereof have been regulated by an instrument in public form. Civ. C. 1317 et seq., 1832 et seq., 1840.

Art. 855. A building which has been destroyed accidentally and not owing to the negligence of the donee is not subject to collation. Civ. C. 860, 1182, 1245, 1302 et seq., 1382, 1573, 1807 et seq.

Art. 856. The revenue and interest from things subject to collation are only due from the day of the opening of the succession. Civ. C. 583 et seq., 718, 928, 1154, 1907.

Art. 857. Collation is only due by a co-heir to his co-heir. It is not due to legatees nor to creditors of the succession. Civ. C. 850, 921 et seq., 1166.

Art. 858. Collation is made in kind or by taking less. Civ. 830 et seq., 868, 869.

Art. 859. It can be demanded in kind as regards real estate, whenever the real estate given has not been conveyed by the donee and there is no real estate in the succession of the same kind, value or importance of which shares approximately equal could be made for the other heirs. Civ. C. 826, 832, 865, 926 et seq.

Art. 860. Collation is only made by taking less when the donee has conveyed the real estate before the opening of the succession: it is due according to the value of the real estate at the time of such opening. Civ. C. 858, 861 et seq., 1245.

Art. 861. In all cases the donee shall be allowed the expenses which have improved the property, according to the increase in value at the time of the division. Civ. C. 555, 599, 862 et seq., 867, 1437, 1634, 2175.

Art. 862. In like manner the donee shall be allowed the necessary expenses which he has been put to for the preservation of the property, even if they have not improved it. Civ. C. 864, 867, 1137, 1634, 2102.

Art. 863. The donee, on the other hand, must account for the injuries and deteriorations which have reduced the value of the real estate by his own act or through his fault and negligence. Civ. C. 1382 et seq., 1631 et seq.

Art. 864. When the real estate has been conveyed by the donee, the improvements made or deteriorations caused by the purchaser shall be charged, in accordance with the three foregoing articles.

Art. 865. When collation is made in kind, the property is added to the bulk of the succession free and exempt from all charges created by the donee; but creditors having a mortgage can take part in the division to prevent the collation from operating in a way which would defraud them of their rights. Civ. C. 662, 882, 1166 et seq., 1179, 1183, 2125.

Art. 866. When a donation of real estate made to a person capable of inheriting and which is exempt from collation exceeds the portion which can be disposed of, the collation of the surplus is made in kind, if such surplus can be conveniently cut off.

Otherwise, if the excess is greater than one-half of the value of the real estate, the donee must collate all the real estate, but he may take out of the bulk of the property the value of the portion which can be disposed of: if such portion exceeds one-half of the value of the real estate, the donee can retain all the real estate, either by taking less or by compensating the heirs in cash or otherwise. Civ. C. 832, 858 et seq., 884 et seq., 913 et seq., 918, 924, 927.

Art. 867. An heir who returns a piece of real estate in kind, can retain possession thereof until the sums due to him for expenses and improvements have been reimbursed in full. Civ. C. 861.

Art. 868. Collation of personal property is only made by taking less. It is effected on the basis of the value of the personal property at the time of the

donation, according to the estimate inserted in the instrument of gift; and, if such estimate is not mentioned, in accordance with a valuation made by experts at the true price and without increase. Civ. C. 825, 830 et seq., 858, 948, 1573.

Art. 869. Collation of money given is made by taking less out of the funds of the succession.

In case of insufficiency, the donee can free himself from collating money, by abandoning either personal property, or if there is no personal property, real estate of the succession, in proportion to the amount due. Civ. C. 858, 868, 1171.

Section III.

Of the Payment of Debts.

Art. 870. The co-heirs contribute between themselves to the payment of the debts and liabilities of the succession, each one in proportion to what he takes. Civ. C. 724, 871 et seq., 1009, 1012, 1024, 1220, 1221, 1669, 1672, 2101.

Art. 871. A legatee under universal title contributes with the heirs pro rata to what he takes; but a special legatee is not liable for the debts and expenses, excepting in case of a mortgage encumbering the real estate devised. Civ. C. 611 et seq., 802, 808, 1009, 1012, 1024 et seq., 2114 et seq.

Art. 872. When the real estate of a succession is encumbered by annuities resulting from a special mortgage, each co-heir can demand that the annuities be reimbursed and the real estate freed, before the formation of the shares takes place. If the co-heirs divide the succession in the condition in which it is,

the encumbered real estate shall be appraised at the same rate as the other real estate: the capital of the annuity is deducted from the total value: the heir to whose share this piece of property is allotted shall alone remain responsible for the payment of the interest and he must give a guarantee to his co-heirs. Civ. C. 530, 1221, 1223 et seq., 1489, 1625 et seq., 1909 et seq., 2103.

Art. 873. The heirs are liable for the debts and expenses of the succession upon their portion and individual share of personal property, and in case of mortgage upon all the estate; subject to their remedy either against the co-heirs or the universal legatees, on account of the part for which the latter must contribute. Civ. C. 351 et seq., 724, 1009, 1220 et seq., 2114 et seq., 2166 et seq.

Art. 874. A special legatee who has paid a debt encumbering the real estate devised is subrogated to the rights of the creditor against the heirs and successors under universal title. Civ. C. 611, 871, 1020, 1024, 1251.

Art. 875. A co-heir or successor under universal title who, owing to a mortgage, has paid more than his share of the common debt, only has a remedy against the other co-heirs or successors under universal title for the part which each of them must assume personally, even in case the co-heir who has paid the debt has caused himself to be subrogated to the rights of the creditors: without prejudice, nevertheless, to the rights of the co-heir who, by reason of benefit of inventory, has retained the privilege of claiming the payment of his personal claim like any

other creditor. Civ. C. 802, 870 et seq., 884, 1009, 1012, 1017, 1213 et seq., 1249 et seq., 2033, 2144 et seq.

Art. 876. In case one of the heirs or successors under universal title should be insolvent, his share of the debt secured by mortgage is apportioned pro rata between all the others. Civ. C. 885 et seq., 1214 et seq., 2026.

Art. 877. Deeds entitling to issue execution against the decedent have the same force against the heir personally; however the creditors cannot enforce the execution until eight days after notice of such deeds has been served upon the heir personally or at his residence. Civ. C. 724, 820 et seq.

Art. 878. They can always, in all cases and against all creditors, demand that the property of the decedent be separated from that of the heir. Civ. C. 802, 873, 879, 880, 2111.

Art. 879. Such right, however, can no longer be exercised in case of novation in the claim against the decedent by the acceptance of the heir as debtor. Civ. C. 873, 878, 1234, 1271 et seq.

Art. 880. It is outlawed with respect to personal property at the expiration of three years.

With respect to real estate, an action can be maintained, so long as such real estate remains in the hands of the heir. Civ. C. 802, 878, 2180 et seq., 2219, 2262, 2279.

Art. 881. The creditors of the heir are not entitled to ask for the separation of the estates against the creditors of the succession. Civ. C. 878 et seq.

Art. 882. The creditors of a coparcener may

object to the division being made except in their presence in order to prevent that their rights be jeopardized; they can take part in the division at their own expense; but they cannot attack a division which is closed, unless, however, it should have been made without them, and notwithstanding a caveat entered by them. Civ. C. 816, 820 et seq., 865, 1166 et seq., 2205.

Section IV.

Of the Effects of Partition and of Warranty of Shares.

Art. 883. Every heir is supposed to have inherited alone and immediately all the things comprised in his share or allotted to him by a sale ordered by the Court and never to have had the ownership of the other things forming part of the succession. Civ. C. 777, 834 et seq., 882, 888, 889, 1184, 1220, 1408, 1563, 1686, 1872, 2103, 2108, 2109, 2113, 2125, 2166.

Art. 884. The heirs remain respectively responsible towards each other for trespasses and ejectments, but only if they result from a cause existing previously to the division.

No guarantee shall exist if the kind of ejectment suffered has been excepted by a special and express clause in the instrument of division: it ceases if the heir has been ejected owing to his own fault. Civ. C. 822, 870 et seq., 885, 1109, 1383, 1626 et seq., 1640, 1696, 2103, 2109.

Art. 885. Each co-heir is personally obliged in proportion to his hereditary share to indemnify his co-heir for the loss which the ejectment has caused him.

If one of the co-heirs is insolvent, the portion for which he is responsible shall also be apportioned equally between the one entitled to the guarantee and all the co-heirs who are solvent. Civ. C. 876, 1214 et seq., 2103 et seq.

Art. 886. The guarantee of solvency of the debtor of an annuity can only be enforced during the five years following the division. No guarantee shall exist on account of insolvency of the debtor, when the insolvency has only taken place since the division was closed. Civ. C. 876, 1276, 1693 et seq.

Section V.

Of Rescission of a Division.

Art. 887. Divisions can be rescinded on account of violence or of fraud.

There is also ground for rescission when one of the heirs establishes that he has been injured to the extent of more than one quarter. The simple omission of a thing forming part of the succession does not give rise to an action for rescission, but only to have the instrument of division completed. Civ. C. 1077 et seq., 1109 et seq., 1111 et seq., 1217, 1304 et seq., 1674 et seq.

Art. 888. An action for rescission can be brought to attack any deed intended to put an end to a joint ownership between co-heirs, even if it is called a sale, an exchange, a compromise or any other name.

But after the division, or the execution of a deed which takes its place, the action for rescission can no longer be maintained to upset the compromise settling the main difficulties resulting from the first deed, even if no suit has been commenced for that purpose.

Civ. C. 887, 889, 1304, 1313, 1408, 1676 et seq., 2044 et seq., 2048 et seq.

Art. 889. The action shall not lie in case of a sale of rights to a succession made without fraud to one of the co-heirs at his risk and peril by his co-heirs or one of them. Civ. C. 780, 841, 887, 888.

Art. 890. In order to ascertain whether a loss has been suffered, the things are appraised at their value at the time of the division. Civ. C. 1675.

Art. 891. The action for rescission can be stopped and a new division avoided, if the defendant offers and delivers to the plaintiff the balance of his hereditary share, either in cash or kind. Civ. C. 826, 840, 1681.

Art. 892. A co-heir who has conveyed his share wholly or in part is no longer entitled to bring an action for rescission on account of fraud or duress, if the conveyance which he has made is subsequent to the discovery of the fraud or the discontinuance of the duress. Civ. C. 887, 1115, 1304, 1338.

TITLE SECOND.

OF DONATIONS INTER VIVOS, AND OF WILLS.

(Passed May 3, 1803; promulgated 13th of same month.)

CHAPTER I.

GENERAL PROVISIONS.

Art. 893. A person can only dispose of his property gratuitously by way of donation inter vivos or by will in the manner hereinafter set forth. Civ. C. 711,

894 et seq., 901 et seq., 931, 1075 et seq., 1081 et seq., 1091 et seq., 1121, 1282 et seq., 1924, 1973.

Art. 894. A donation inter vivos is an act by which the donor divests himself at the time and irrevocably of the thing given in favor of the donee, who accepts it. Civ. C. 711, 901 et seq., 931 et seq., 938 et seq., 942, 947, 951 et seq., 1081, 1082, 1083, 1086 et seq., 1091 et seq., 1096.

Art. 895. A will is an instrument by which a testator disposes for the time when he is no longer alive, of the whole or part of his property, and which he can revoke. Civ. C. 711, 901 et seq., 913 et seq., 967, 969, 970, 981, 1002, 1003, 1035, 1094 et seq.

Art. 896. Entails are prohibited.

Every provision by which a donee, an heir appointed or a legatee shall be required to keep property and to return it to a third person is void, even as against the donee, the heir appointed or the legatee.

(Repealed by laws of May 13, 1835, and May 11, 1849). *Nevertheless, property which can be disposed of and which forms part of the endowment of a hereditary title created by the King in favor of a prince or the head of a family can be transmitted by way of inheritance, as provided by the Act of the 30th March,* 1806, *and by Act of the 14th August following. Civ. C.* 897 *et seq.*, 911, 949, 1040, 1048 *et seq.*, 1100.

Art. 897. Are excepted from the first two paragraphs of the foregoing article the provisions which fathers and mothers, brothers and sisters are allowed to make under chapter VI of the present title.

Art. 898. The provision by which a third party is designated to take a donation, an inheritance or a legacy in case a donee, an heir appointed or a legatee should not take it, shall not be considered as an entail and shall be valid. Civ. C. 899, 1039 et seq., 1082, 1088.

Art. 899. The same rule shall apply to a donation inter vivos or a will by which the usufruct is given to one person and the remainder to another. Civ. C. 578 et seq., 849.

Art. 900. Whenever property is disposed of inter vivos or by will, the conditions which are impossible or contrary to law or good morals shall be considered as unwritten. Civ. C. 6, 815, 1133, 1172, 1387 et seq., 1600.

Chapter II.

Of the Capacity of disposing or receiving by Donation Inter Vivos or by Will.

Art. 901. To make a donation inter vivos or a will, one must be of sound mind. Civ. C. 489, 499, 502 et seq., 513, 894 et seq., 1109 et seq., 1116.

Art. 902. All persons can dispose of or receive property by donation inter vivos or by will, excepting those whom the law declares to be incapable. Civ. C. 25, 28, 463, 489, 499, 502 et seq., 513, 725, 727, 903 et seq., 997, 1422, 1554 et seq.

Art. 903. A minor under sixteen years of age cannot in any way dispose of his property, except as

provided in chapter IX of the present title. Civ. C. 389, 450, 484, 904, 1095, 1096, 1309, 1398.

Art. 904. A minor who has reached the age of sixteen years can only dispose of his property by will, and only to the extent of one half of the property which the law allows a person of full age to dispose of. (Law of October 28, 1916). Nevertheless if he is called to serve under the colors in time of war, he may, during the continuance of the war, dispose of the same portion, as if he were of full age, in favor of any or several relatives up to the sixth degree inclusively or in favor of a surviving spouse.

In default of relatives up to the sixth degree inclusively, the minor can dispose of his property in the same manner as a person of full age. Civ. C. 484, 907, 913 et seq., 1095.

Art. 905. A married woman cannot make a donation inter vivos without the special assistance or consent of her husband, or without having been authorized by the Court, in accordance with what is provided in articles 217 and 219 of the title *Of Marriage.*

She does not require the consent of her husband, nor the authorization of the Court, to dispose of her property by will. Civ. C. 222, 226, 934, 1029, 1091 et seq., 1096, 1389, 1449, 1955.

Art. 906. To be capable of receiving a donation inter vivos, it is sufficient that one should be conceived at the time of the donation.

To be capable of receiving under a will, it is sufficient that one should be conceived at the time of the death of the testator.

Nevertheless, the donation or will can only take effect in case the child, at his birth, is likely to live. Civ. C. 135, 312, 314, 725, 902, 1048 et seq., 1081.

Art. 907. A minor, although he has reached the age of sixteen years, cannot dispose of his property in favor of his guardian, even by will.

A minor who has come of age cannot dispose of his property, either by donation inter vivos or by will, in favor of the person who has been his guardian, if the final guardianship account has not been previously rendered and approved.

The ascendants of minors who are or have been their guardians are excepted in the two foregoing cases. Civ. C. 402 et seq., 450, 471 et seq., 904, 1095.

Art. 908. (Law of March 25, 1896). Natural children legally acknowledged cannot receive by donation inter vivos anything beyond what is granted to them under the title *Of Successions*. Such incapacity can only be invoked by the descendants of the donor, by his ascendants, by his brothers and sisters and the legitimate descendants of his brothers and sisters.

The father and mother who have acknowledged them may bequeath to them the whole or part of the portion which can be disposed of, but when he takes together with legitimate descendants, a natural child can never receive more than the equivalent of the smallest share which a legitimate child is entitled to.

Adulterous or incestuous children cannot receive by donation inter vivos or by will more than is granted them under articles 762, 763 and 764. Civ. C. 334 et seq., 723, 756 et seq., 1338.

Art. 909. Physicians or surgeons, health officers and druggists who have taken care of a person during the illness of which he dies, are not entitled to the donations inter vivos or bequests by will which he has made in their favor, during the course of such illness.

Are excepted :

1° The special provisions for compensation, taking into account the means of the one who has made them and the services rendered;

2° The general provisions in case of relationship up to the fourth degree inclusively, provided, however, the decedent has no heirs in the direct line; unless the person in whose favor the provisions are made is himself one of such heirs.

The same rules apply to ministers of the Gospel. Civ. C. 735 et seq., 911, 1002 et seq., 1010, 1014.

Art. 910. Liberalities made by donations inter vivos or wills in favor of hospitals of the poor of a county or of establishments of public utility can only take effect if they have been authorized by a Royal decree (*a decree of the President of the Republic*). Civ. C. 537, 894 et seq., 902, 937, 940, 1340, 2045.

Art. 911. All provisions in favor of a person who is incapable of taking shall be void if they are disguised under the form of a contract for consideration, or if made in the name of intermediaries.

Are considered intermediaries, the father and mother, the children and descendants, and the husband or wife of the person who is incapable of taking. Civ. C. 902, 906 et seq., 967, 1099, 1106, 1350, 1352, 1596.

Art. 912. (Repealed by law of July 14, 1819). *One cannot dispose in favor of a foreigner, unless the latter can dispose in favor of a Frenchman.*

Chapter III.

Of the Portion of Property which can be disposed of and of Reduction.

Section I.

Of the portion of Property which can be disposed of.

Art. 913. Liberalities resulting from donations inter vivos or from wills cannot exceed one half of the property of the giver, if he leaves only one legitimate child at his death; one-third if he leaves two children; one fourth if he leaves three or a greater number.

(Law of March 25, 1896). A natural child legally acknowledged is entitled to a reserve. Such reserve is a portion of what he would have taken had he been legitimate, calculated by taking into account the proportion which exists between the share attributed to the natural child in case of intestacy and what he would receive in the same case, had he been legitimate.

The present article includes under the designation of children, the descendants in all degrees. Nevertheless, they are only counted as for the child they represent in the succession of the giver. Civ. C. 739 et seq., 914 et seq., 920 et seq., 1004, 1090, 1094 et seq., 1098, 1525.

Art. 914. (Law of March 25, 1896). Liberalities resulting from donations inter vivos or from wills cannot exceed one-half of the property if, in case there are no children, the decedent leaves one or more ascendants in each of the paternal and maternal lines, and three-quarters if he leaves ascendants in one line only.

The property thus reserved for the benefit of ascendants shall be taken by them in the order in which the law calls them to inherit; they shall be entitled to the entire reserve in all cases in which a division including collaterals would not give them the portion of property thus secured. Civ. C. 731 et seq., 733, 736 et seq., 746 et seq., 753, 765, 785, 844 et seq., 904, 907 et seq., 916, 1094.

Art. 915. (Law of March 25, 1896). When in default of legitimate children the decedent leaves at the same time one or more natural children and ascendants in both or only one line, liberalities resulting from donations inter vivos or wills cannot exceed one half of the property of the giver, if there be but one natural child, one-third if there be two, one-fourth if there be three or more. The property so reserved shall go to the ascendants to the extent of an eighth of the estate and the balance to the natural children.

Art. 916. If there are no ascendants or descendants, liberalities by donations inter vivos or wills can exhaust all the property.

Art. 917. If a disposition contained in a donation inter vivos or a will establishes a usufruct or a life annuity of which the amount exceeds the portion of property which can be disposed of, the heirs in whose

favor the law allows a reserve may, at their option, either carry out the disposition or abandon the portion of property which can be disposed of. Civ. C. 578 et seq., 610 et seq., 899, 918, 949, 1015, 1094, 1969 et seq.

Art. 918. The value of property in full ownership conveyed either on condition of paying a life annuity, or absolutely, or subject to a usufruct in favor of one of the successors in the direct line, shall be charged to the portion which can be disposed of; and the surplus, if there is any, shall be returned to the estate. Such charge and return cannot be demanded by the other successors in the direct line who may have consented to such conveyances, and in no case by successors in the collateral line. Civ. C. 736 et seq., 745 et seq., 791, 843 et seq., 949, 1130, 1340, 1968 et seq.

Art. 919. (Law of March 24, 1898). The portion of property which can be disposed of, may be given wholly or in part, either by donation inter vivos or by will to the children or other successors of the donor, without having to be returned by the donee or the legatee who shares in the succession, provided that, as regards donations, the gift has been expressly made by way of preciput and in addition to his share.

The declaration that the donation is by way of preciput and in addition to the share can be made either in the deed containing the gift or subsequently in the manner provided for donations inter vivos or wills. Civ. C. 843, 931 et seq., 969 et seq., 981 et seq.

SECTION II.

OF THE REDUCTION OF DONATIONS AND LEGACIES.

Art. 920. Donations, either inter vivos or mortis causa, which exceed the portion of property which can be disposed of, shall be reduced to that portion, when the succession becomes open. Civ. C. 718, 894 et seq., 913 et seq., 921, 1000, 1496, 1527, 1970, 1973.

Art. 921. The reduction of donations inter vivos can only be demanded by those for whose benefit the law allows a reserve or by their heirs or legal representatives: the donees, legatees and creditors of the decedent cannot demand such a reduction or benefit by it. Civ. C. 756, 857, 878, 908, 913 et seq., 925, 1166 et seq.

Art. 922. The reduction is determined by forming a total of all the property existing at the death of the donor or testator. Such property as he has disposed of by donations inter vivos, according to the schedule thereof drawn at the time of the donations, and to their value at the time of the death of the donor, is fictitiously added. After deducting the debts, a calculation is made based on all such property to figure the portion which he could dispose of, owing to the kind of heirs whom he leaves. Civ. C. 829 et seq., 843 et seq., 861, 868 et seq. 870,

Art. 923. Donations inter vivos shall never be reduced, until the whole value of the property disposed of under the will has been exhausted; and when such reduction takes place, it shall commence with the last donation and so on, starting from the last to the previous ones. Civ. C. 894, 925 et seq.

Art. 924. If a donation inter vivos subject to reduction has been made to one of the successors, he can retain such part of the property given as represents his share as heir of the property which could not be disposed of, if it is of the same kind. Civ. C. 832, 859, 866 et seq.

Art. 925. When the amount of the donation inter vivos exceeds or is equal to the portion which can be disposed of, all the testamentary bequests shall lapse. Civ. C. 824 et seq., 923, 1039 et seq.

Art. 926. When the testamentary bequests exceed either the portion which can be disposed of or the part remaining after the amount of the donations inter vivos has been deducted, the reduction shall take place pro rata, without any distinction between the universal and specific legacies. Civ. C. 824 et seq., 844, 870, 913 et seq., 927, 1002, 1003, 1009 et seq., 1024.

Art. 927. Nevertheless, in all cases when the testator has expressly declared that he intends that a certain legacy shall be paid in preference to others, such preference shall be carried out; and the legacy to which it applies shall only be reduced if the amount of the others is insufficient to complete the legal reserve. Civ. C. 1009, 1024.

Art. 928. The donee shall return the income of what exceeds the portion which can be disposed of, from the day of the death of the donor, if the action for reduction has been brought within the year: if not, from the day of the complaint. Civ. C. 549 et seq., 583 et seq., 856, 958, 962, 1005 et seq., 1153 et seq., 2277.

Art. 929. The real estate which is to be returned owing to the reduction shall not be encumbered by any debts or mortgages created by the donee. Civ. C. 865, 930, 2125.

Art. 930. The action for reduction or restitution can be brought by the heirs against third parties holding the real estate which forms part of donations and has been conveyed by the donee, in the same manner and in the same order as against the donees themselves, and after the liability with respect to their property has been enforced. Such action shall be brought according to the order of dates of the conveyances, beginning with the most recent one. Civ. C. 859 et seq., 923, 1026 et seq., 2021 et seq., 2262, 2265 et seq.

Chapter IV.

Of donations inter vivos.

Section I.

Of the Form of Donations inter vivos.

Art. 931. Every instrument containing a donation inter vivos shall be executed before notaries in the ordinary form of contracts, and the original shall remain with them: otherwise such instruments shall be void. Civ. C. 894, 948, 949, 1339, 1340.

Art. 932. A donation inter vivos shall not be binding upon the donor and shall not produce any effect, until the day upon which it has been accepted in express terms.

The acceptance may be made during the lifetime of the donor by a subsequent public instrument, of

which the original shall remain (with the notary); but then the donation shall not become effective, as regards the donor, until the day upon which he has been given notice of the instrument containing such acceptance. Civ. C. 894, 933 et seq., 942, 948, 1084 et seq., 1317, 1690.

Art. 933. If the donee is of full age, the acceptance shall be made by him or in his name by the person who holds his power of attorney containing the power to accept the donation or a general power to accept donations which have or might have been made.

Such power shall be executed before notaries and a certified copy thereof shall be annexed to the original of the donation or to the original of the acceptance, if made by separate instrument: Civ. C. 488, 935, 1317, 1985, 1987.

Art. 934. A married woman cannot accept a donation without her husband's consent, or in case of refusal of the husband, without the consent of the Court, in accordance with what is specified in articles 217 and 219 under the title *Of Marriage.* Civ. C. 222 et seq., 905, 940, 942, 1029, 1125.

Art. 935. A donation made to a minor who is not emancipated, or to an interdicted person, must be accepted by his guardian, in accordance with article 463 of the title *Of Minority, Guardianship and Emancipation.*

An emancipated minor can accept with the assistance of his curator.

Nevertheless, the father and mother of the minor, whether he is emancipated or not, or the other ascendants, even during the lifetime of the father

and mother, although they are not the guardians or curators of the minor, can accept for him. Civ. C. 388, 476 et seq., 489, 509, 940 et seq., 1087, 1125, 1305, 1314.

Art. 936. A deaf and dumb person who knows how to write can accept, either personally or by attorney-in-fact.

If he does not know how to write, the acceptance must be made by a curator appointed for that purpose, in accordance with the rules laid down in the title *Of Minority, Guardianship and Emancipation.* Civ. C. 406, 979, 1317.

Art. 937. Donations made in favor of hospitals of the poor of a municipality, or institutions of public utility, can be accepted by the administrators of such municipalities or institutions, after they have been duly authorized. Civ. C. 910, 940 et seq.

Art. 938. A donation duly accepted shall become final by the sole consent of the parties: the ownership of the things given are transferred to the donee without any delivery being required. Civ. C. 711, 894, 932, 939 et seq., 1108 et seq., 1138, 1141, 1339 et seq.

Art. 939. When a donation is made of property which can be mortgaged, the recording of the deeds containing the donation and the acceptance and notice of acceptance which may have taken place by separate instrument, shall be made at the office of mortgages in the district where the property is situated. Civ. C. 938 et seq., 958, 1069 et seq., 2108, 2114, 2118, 2181.

Art. 940. Such recording shall be made at the instance of the husband when the property has been

given to his wife, and if the husband does not comply with this requirement, the wife can have it done without his consent.

When a donation is made to minors, interdicted persons or public institutions, the recording shall be made at the request of the guardians, curators or administrators. Civ. C. 213 et seq., 388 et seq., 450, 480 et seq., 489, 497, 509, 910, 934 et seq., 941 et seq. 1069 et seq., 1428, 1531, 1536, 1549, 2138 et seq.

Art. 941. Failure to have the recording made can be set up by all interested parties, excepting, however, those who have charge of having the recording made or their representatives and the donor. Civ. C. 938, 939, 940, 1070, 1072, 2136 et seq.

Art. 942. Minors, interdicted persons, married women, shall not be reinstated in case of failure to accept or omission to have the recording made; subject to their remedy against their guardians or husbands, if there is occasion therefor, and they shall not be reinstated, even if the said guardians or husbands are insolvent. Civ. C. 213, 450, 469, 489, 509, 932 et seq., 1070 et seq., 1382 et seq., 1428, 1531, 1536, 1549, 1576 et seq.

Art. 943. A donation inter vivos can only include property actually owned by the donor: if it includes future property, it shall be void as regards the same. Civ. C. 894, 900, 947, 948, 1076, 1082 et seq., 1093 et seq., 1130.

Art. 944. Every donation inter vivos made subject to conditions of which the realization depends solely upon the will of the donor, shall be void. Civ. C. 900, 945 et seq., 1086, 1170, 1174.

Art. 945. A donation shall likewise be void if it has been made on condition of paying debts or liabilities other than those which existed at the time of the donation, or which are mentioned either in the instrument of donation or in a schedule which may be annexed thereto. Civ. C. 900, 947, 1084, 1086.

Art. 946. If the donor has reserved to himself the right to dispose of an article included in the donation, or of a specific amount out of the property given, and dies without having disposed of the same, the said article or amount shall belong to the heirs of the donor, notwithstanding all clauses and stipulations to the contrary. Civ. C. 6, 724, 900, 924, 947, 1086.

Art. 947. The four foregoing articles do not apply to the donations which are mentioned in chapters VIII and IX of the present title. Civ. C. 1081 et seq., 1091 et seq.

Art. 948. Every instrument containing a donation of personal property shall only be valid as regards the articles of which a schedule with valuation has been made, signed by the donor and the donee or by those who accept for the latter and annexed to the original instrument containing the donation. Civ. C. 527 et seq., 535 et seq., 868, 932 et seq., 943, 1084 et seq., 2279.

Art. 949. The donor has the right to reserve to himself the enjoyment or the usufruct of the personal property or real estate given, or to dispose of it in favor or another person. Civ. C. 578, 896, 899, 950.

Art. 950. When a donation of personal property has been made and the usufruct reserved, the donee shall be obliged, at the expiration of the usufruct, to

take the articles given which are found in kind in the condition in which they are; and he has a cause of action against the donor or his heirs on account of the articles which do not exist, to the extent of the value which was given to them in the schedule containing the valuations. Civ. C. 589, 600, 615 et seq.

Art. 951. A donor may stipulate that the articles given shall be returned to him, either in case of the previous death of the donee alone or in case of the previous death of the donee and of his descendants.

This stipulation can only be made in favor of the donor alone. Civ. C. 351, 747, 766, 900, 952, 1088 et seq., 1093.

Art. 952. The effect of the stipulation to have the things returned shall be to cancel all transfers of the property given and to make the property revert to the donor free and unencumbered by any liabilities and mortgages, with the exception, nevertheless, of a mortgage applying to dowry and of matrimonial agreements if the other property of the husband who is the donee is not sufficient, and only in case the donation has been made in the same marriage contract from which such rights and mortgages result. Civ. C. 747, 865, 929, 954, 963, 1167, 1183, 1387, 2114, 2121, 2125.

SECTION II.

OF EXCEPTIONS TO THE RULE OF IRREVOCABILITY OF DONATIONS INTER VIVOS.

Art. 953. A donation inter vivos can only be revoked for non-performance of the conditions under which it was made, for ingratitude, or on account of

birth of children. Civ. C. 954 et seq., 959, 1096, 1134, 1175, 1184.

Art. 954. In case of revocation for non-performance of the conditions, the property shall revert to the donor free of all charges and unencumbered by any mortgages emanating from the donee, and the donor shall have the same rights against third parties in possession of the real estate given as he would have against the donee himself. Civ. C. 900, 929, 944, 952, 956, 1046, 2125.

Art. 955. A donation inter vivos can only be revoked for ingratitude in the following cases:

1° If the donee has sought to take the life of the donor;

2° If he has been guilty towards him of cruelty, felonies, or of serious wrongs;

3° If he refuses to grant him nourishment. Civ. C. 205, 208 et seq., 231, 299 et seq., 727, 956, 1046 et seq.

Art. 956. A revocation for non-performance of conditions or for ingratitude shall never take place as a matter of right. Civ. V. 957 et seq., 1088, 1184, 1656, 2262.

Art. 957. An action for revocation on account of ingratitude shall be brought within the year from the day of the offense with which the donee is charged by the donor, or from the day upon which the offense has become known to the donor.

Such revocation cannot be applied for by the donor against the heirs of the donee, nor by the heirs of the donor against the donee, unless in the latter case the action had been commenced by the donor, or he has

died within a year from the time of the offense. Civ. C. 1047.

Art. 958. A revocation on account of ingratitude shall not affect the conveyances made by the donee, nor the mortgages or other encumbrances on realty with which he may have burdened the property forming part of the donation, provided they are all previous to the recording which has been made of the extract of the complaint in view of revocation in the margin of the transcription ordered by article 939.

In case of revocation, the donee shall be ordered to return the value of the property conveyed, taking into account the time when the action was brought and the revenue from the day of the legal demand. Civ. C. 549 et seq., 928, 952, 963, 1153, 2125.

Art. 959. Donations in view of marriage shall not be revoked on account of ingratitude. Civ. C. 299 et seq., 947, 1081 et seq., 1091 et seq., 1518.

Art. 960. All donations inter vivos made by persons who have no children or descendants actually living at the time of the donation shall be revoked, as a matter of right, upon the birth of a legitimate child of the donor, even if posthumous, or in case of the legitimation of a natural child by subsequent marriage, if born since the donation, of whatever value these donations may be and for whatever cause they may have been made, even if they were mutual or remunerative, and even if they were made in view of marriage by persons other than ascendants to the husband or wife, or by the husband or wife to each other. Civ. C. 331 et seq., 953, 961 et seq., 1081 et seq., 1091, 1096.

Art. 961. Such revocation shall take place even if

the child of the donor had been conceived at the time of the donation.

Art. 962. A donation is likewise revoked even if the donee has taken possession of the property given and has been allowed by the donor to retain the same after the birth of a child; but the donee shall not be obliged to return the revenue collected by him, of whatever nature it may be, except from the day of the birth of the child or of his legitimation by subsequent marriage, of which notice has been served upon him by writ or by some other instrument in due form; and even if the action to recover the property given has only been brought subsequently to such notice. Civ. C. 549 et seq., 583 et seq., 928, 958.

Art. 963. The property forming part of the donation which has been revoked, as a matter of right, shall revert to the estate of the donor free from all encumbrances and mortgages on the part of the donee, and such property shall not be applied, even as collateral, to the repayment either of the dowry of the wife of such donee, or of what she is entitled to take back, or of other matrimonial agreements; and this rule shall apply, even if the donation had been made in view of the marriage of the donee and had been inserted in the contract, and if the donor had bound himself as surety in the donation for the performance of the marriage contract. Civ. C. 952 et seq., 958, 2125.

Art. 964. Donations which have been revoked in this way cannot be revived or take effect again, either by the death of the donor's child, or by any instrument confirming them; and if the donor wishes to give the same property to the same donee, either

before or after the death of the child, on account of whose birth the donation has been revoked, he can only do so by a new deed. Civ. C. 931 et seq., 1339.

Art. 965. Every clause or agreement by which the donor may have renounced the right of revocation of the donation, in case of birth of a child, shall be considered as void and shall not produce any effect. Civ. C. 6, 900, 946, 1133.

Art. 966. The donee, his heirs or representatives, or other persons in possession of the property given, cannot set up prescription to maintain the validity of the donation revoked owing to the birth of a child, until after being in possession for thirty years, which shall only commence to run from the day of the birth of the last child of the donor, even if posthumous, and subject to the interruptions resulting from the law. Civ. C. 2242 et seq., 2251 et seq., 2262.

Chapter V.

Of Testamentary Dispositions.

Section I.

Of General Rules applying to the Form of Wills.

Art. 967. Every person can dispose of his property by will, either by the appointment of an heir or by making a legacy or in any other way sufficient to express his wish. Civ. C. 226, 895, 901 et seq., 913 et seq., 920, 968 et seq., 1002 et seq., 1010 et seq., 1025 et seq., 1035 et seq., 1048 et seq., 1075 et seq., 1081 et seq., 1091 et seq., 1098 et seq.

Art. 968. A will cannot be made in the same instrument by two or several persons, either in favor of a third party, or by way of mutual and reciprocal dispositions. Civ. C. 1001, 1097.

Art. 969. A will can be holographic, or be made by a public instrument, or in the mystic form. Civ. C. 970 et seq., 980, 1001.

Art. 970. A holographic will shall not be valid unless it is entirely written, dated, and signed, in the hand of the testator ; it is not subject to any other formality. Civ. C. 999, 1001, 1007 et seq., 1323 et seq., 1328.

Art. 971. A will made by public instrument shall be received by two notaries in the presence of two witnesses, or by one notary in the presence of four witnesses. Civ. C. 972, 973, 975, 980, 1001.

Art. 972. If a will is received by two notaries, it shall be dictated to them by the testator and must be written out by one of the notaries as dictated.

If there is only one notary, it shall also be dictated by the testator and written out by such notary.

In both cases it shall be read over to the testator, in the presence of the witnesses.

All of which shall be expressly mentioned. Civ. C. 931, 975, 980, 1001.

Art. 973. Such a will shall be signed by the testator: if he declares that he cannot or does not know how to sign, his declaration shall be expressly mentioned in the instrument, as well as the cause preventing him from signing. Civ. C. 974, 1001.

Art. 974. The will shall be signed by the witnesses : nevertheless, in the country the signature

of one of the two witnesses shall be sufficient if the will is received by two notaries, and the signatures of two out of the four witnesses shall be sufficient if it is received by one notary. Civ. C. 971, 973 et seq., 975, 980, 1001.

Art. 975. The legatees, of whatever kind they may be, and their blood relatives or connections by marriage up to the fourth degree inclusively, and the clerks of the notaries who have received the instrument, cannot be taken as witnesses to a will made by public instrument. Civ. C. 735 et seq., 980, 1001 et seq., 1010 et seq., 1014 et seq.

Art. 976. When a testator desires to make a mystic or secret will, he shall be obliged to sign the instrument, whether he has written it himself or whether he has caused it to be written out by another person. The paper containing his will, or the paper used as an envelope, if there is one, shall be closed and sealed. The testator shall present it thus closed and sealed to the notary and to six witnesses at least, or he shall have it closed and sealed in their presence; and he shall declare that such paper contains his will, written and signed by him, or written out by another person and signed by him: the notary shall draw up a certificate of superscription which shall be written out on the paper or sheet used as an envelope; the certificate shall be signed by both the testator and the notary and also by the witnesses. All of which shall be done without interruption and without attending to other business; and in case the testator should not be able to sign the certificate of superscription owing to an impediment arisen since the signing of the will, his declaration to that effect shall be mentioned, and

in such case it shall not be necessary to increase the number of witnesses. Civ. C. 895, 969, 977, 978, 1001, 1007 et seq.

Art. 977. If the testator does not know how to sign, or could not sign, when he had his will written out, another witness, in addition to the number of witnesses mentioned in the foregoing article, shall be called for the certificate of superscription and he shall sign the same with the other witnesses; and the reason for which this witness has been called shall be mentioned. Civ. C. 980, 1001.

Art. 978. Those who cannot, or do not know how to write, cannot make a will in the mystic form. Civ. C. 1001.

Art. 979. In case the testator should not be able to speak, but can write, he may make a mystic will, provided the will is entirely written, dated and signed in his hand, and is presented to the notary and to the witnesses, and provided he writes at the top of the certificate of superscription, in their presence, that the paper which he presents is his will; after which the notary shall write out the certificate of superscription in which he shall mention that the testator has written these words in the presence of the notary and of the witnesses, and everything that is specified in article 976 shall likewise be followed. Civ. C. 936, 970, 980, 1001.

Art. 980. (Law of Dec. 7, 1897). The witnesses called to attest wills must be of full age and French, of either sex. Nevertheless a husband and wife may not be witnesses together to the same will. Civ. C. 13, 25, 28, 37, 488, 895, 971, 975 et seq., 1001.

SECTION II.

OF SPECIAL RULES APPLYING TO THE FORM OF CERTAIN WILLS.

Art. 981. (Law of May 17, 1900). Wills of soldiers and sailors of the State and of persons employed with the armies may be received in the cases and under the conditions specified in article 93, either by a superior officer or an army surgeon of a corresponding rank in the presence of two witnesses; or by two employees of the commissariat or by officers of the commissaryship; or by one of such employees or officers in the presence of two witnesses; or finally, in a separate detachment, by the officer commanding the detachment, with the assistance of two witnesses, if there should not be any superior officer or army surgeon of a corresponding rank, or employee of the commissariat or officer of the commissaryship, in the detachment..

The will of the officer commanding a separate detachment may be received by the one coming after him in rank.

The right to make a will under the conditions specified in the present article shall extend to prisoners in the hands of the enemy. Civ. C. 1001.

Art. 982. (Law of May 17, 1900). The wills mentioned in the foregoing article can also, if the testator is ill or wounded, be received in hospitals or military field ambulances, such as they are defined by the army regulations, by the head physician, whatever may be his rank, with the assistance of the acting administrative officer.

If there be no such administrative officer, the

presence of two witnesses shall be necessary. Civ. C. 983 et seq., 998, 1001.

Art. 983. (Law of June 8, 1893). In all cases a duplicate of the wills mentioned in the two foregoing articles shall be made.

If such requirement could not be complied with owing to the condition of health of the testator, a certified copy of the will shall be made to take the place of the duplicate: this certified copy shall be signed by the witnesses and officials who have acted. The reasons which have prevented the duplicate from being made shall be mentioned.

So soon as communications are reestablished, and within the shortest time, the two originals, or the original and the certified copy of the will, shall be addressed separately and by different mails, under closed and sealed cover, to the Minister of War or of the Navy, to be filed with the notary mentioned by the testator, and in case none has been mentioned, with the President of the Notaries' Association of the district of the last domicile.

Art. 984. (Law of June 8, 1893). A will made in the manner above set forth shall become void six months after the testator has returned to a place where he is able to comply with the ordinary requirements unless, before the expiration of such time, he should again be placed in one of the special situations specified in article 93. The will shall then be valid during the time he is so situated and during a new period of six months after its expiration.

Art. 985. Wills made in a place with which all communications are intercepted, on account of a plague or other contagious disease, may be made

before the Justice of the Peace or before one of the Municipal Officers of the district, in the presence of two witnesses.

(Law of July 28, 1915). Such provision shall apply as well to those who are suffering from such diseases as to those who are in the places thus stricken, even if they are not actually ill. Civ. C. 895, 980, 986 et seq., 998, 1001.

Art. 986. (Law of July 28, 1915). Wills made in an island of the European territory of France, where no notary's office exists, and when it is impossible to communicate with the continent, may be received as is stated in the foregoing article. The Justice of the Peace or the municipal official who has received the will shall certify in it that communications were impossible. Civ. C. 987 et seq., 998, 1001.

Art. 987. The wills mentioned in the two foregoing articles shall become void six months after communications have been re-established with the place where the testator happens to be, or six months after he has gone to another place where they are not interrupted.

Art. 988. (Law of June, 1893). During the course of a sea voyage, either at sea or during a stoppage in port, if it is impossible to have any communication with land, or if the port being in a foreign country, there is no French diplomatic or consular agent performing the duties of a notary, the wills of the persons present on board shall be received in the presence of two witnesses; on the ships of the navy by the administrative officer, or in his absence by the commander or the officer acting as such, and on other ships by the captain, commander or master,

with the assistance of the second in command of the ship, or in their absence by those who replace them.

The instrument shall mention under which of the circumstances above set forth it has been received Civ. C. 59, 86, 980, 989 et seq., 996, 997, 998, 1001.

Art. 989. (Law of June 8, 1893). On the ships of the State, the will of the administrative officer shall, under the circumstances mentioned in the foregoing article, be received by the captain or by the officer acting as such, and if there is no administrative officer, the will of the captain shall be received by the one coming after him in rank.

On other ships, the will of the captain, commander or master, or of the first mate, shall, under the same circumstances, be received by those next in order of duty. Civ. C. 990 et seq., 996 et seq., 1001.

Art. 990. (Law of June 8, 1893). In all cases a duplicate of the wills mentioned in the two foregoing articles shall be made.

If this formality could not be complied with, on account of the state of health of the testator, a certified copy of the will shall be made to take the place of the duplicate; this certified copy shall be signed by the witnesses and the attesting officers. The causes which have prevented the duplicate from being made shall be mentioned.

Art. 991. (Law of June 8, 1893). At the first stoppage in a foreign port where a French diplomatic or consular agent is to be found, one of the originals, or the certified copy of the will, shall be delivered, under closed and sealed cover, to this official, who shall forward it to the Minister of the Navy, in order

that it may be deposited, as is stated in article 983. Civ. C. 60, 87, 102, 110, 1001.

Art. 992. (Law of June 8, 1893). Upon the arrival of the ship in a French port, the two originals of the will, or the original and the certified copy, or the original which remains in case of transmission or delivery effected during the course of the voyage, shall be deposited, under closed and sealed cover, for the ships of the State, at the office of equipment, and for the other ships, at the office of maritime inscriptions. Each of these documents shall be addressed, separately and by different mails, to the Minister of the Navy, who shall forward them as is specified in article 983. Civ. C. 60 et seq.

Art. 993. (Law of June 8, 1893). The delivery of the originals or certified copies of the will made in accordance with the provisions of the foregoing articles, at the consulate, at the office of equipment, or at the office of maritime inscriptions, shall be mentioned on the roll of the ship opposite the name of the testator. Civ. C. 60 et seq., 991 et seq.

Art. 994. (Law of June 8, 1893). A will made during the course of a sea voyage in the manner specified in articles 988 and the following shall only be valid if the testator dies on board or within six months after landing in a place where he could have made it over again in the usual form.

Nevertheless, if the testator undertakes a new sea journey before the expiration of that time, the will shall be valid during the continuance of such voyage and during a new period of six months after the testator has landed again. Civ. C. 895, 969 et seq., 999 et seq.

Art. 995. (Law of June 8, 1893). The provisions contained in a will made during the course of a sea voyage in favor of the officers of the ship, other than those who are blood relatives or connections by marriage of the testator, shall be null and void.

The same rule applies whether the will is made in the holographic form or in accordance with articles 988 et seq.

Art. 996. (Law of June 8, 1893). The provisions of articles 984, 987, or 904, as the case may be, shall be read to the testator in the presence of the witnesses, and it shall be mentioned in the will that the same have been so read.

Art. 997. (Law of June 8, 1893). The wills referred to in the foregoing articles of the present section shall be signed by the testator, by those who have received them, and by the witnesses.

Art. 998. (Law of June 8, 1893). If the testator declares that he cannot or does not know how to sign, his declaration shall be mentioned and also the reason which has prevented him from signing.

In the cases in which the presence of two witnesses is required, the will shall be signed by one of them at least, and the cause for which the other has not signed shall be mentioned. Civ. C. 973, 974, 980 et seq., 995, 1001.

Art. 999. A Frenchman who is in a foreign country can make his will by an instrument under private signature, as is specified in article 970, or by a public instrument according to the form in use in the place where such instrument is made. Civ. C. 3, 11, 47, et seq., 170, 969, et seq., 981, 994, 1000, 1317.

Art. 1000. Wills made in a foreign country can only be enforced as to property situated in France when they have been registered at the office of the testator's domicile, if he has retained one, and if not, at the office of his last known domicile in France; and in case the will contains provisions relating to real estate situated in France, it shall also be registered at the office of the place where such real estate is situated, but no double tax shall be charged. Civ. C. 102 et seq., 110.

Art. 1001. Unless the formalities required for the various kinds of wills according to the provisions of the present and foregoing section have been complied with, the wills shall be void. Civ. C. 970 et seq., 981 et seq., 988 et seq., 998.

Section III.

Of the Appointment of Heirs and of Legacies in General.

Art. 1002. Testamentary dispositions are either universal, or under universal title, or under special title.

Every disposition of the kind, whether made in the form of the appointment of an heir, or in the form of a legacy, shall produce its effect according to the rules hereafter laid down for universal legacies, legacies under universal title, or specific legacies. Civ. C. 711, 893, 895, 967, 1003 et seq., 1010 et seq., 1014.

Section IV.

Of Universal Legacies.

Art. 1003. A universal legacy is a testamentary disposition by which the testator gives to one or several persons all the property which he may leave at his death. Civ. C. 610, 793 et seq., 895, 904, 967, 1002, 1004, 1009, 1014, 1043, 1044.

Art. 1004. When, at the death of the testator, there are heirs to whom a part of his property is reserved by law, such heirs are seized, as a matter of right, upon his death of all the property of the succession; and the universal legatee is obliged to ask them to deliver the property left by the will. Civ. C. 724, 904, 913 et seq., 1005 et seq., 1011, 1014, 1025, et seq.

Art. 1005. Nevertheless, in the same cases the universal legatee shall have the enjoyment of the property left by the will from the day of the death, if the demand of delivery has been made within one year from that time; and if not, such enjoyment shall only commence from the day of the demand made in Court or from the time the delivery may have been voluntarily consented to. Civ. C. 138, 549 et seq., 928.

Art. 1006. When, at the death of the testator, there are no heirs to whom a portion of the property is reserved by law, the universal legatee shall be seized, as a matter of right, of the property in consequence of the death of the testator, without being obliged to ask for delivery. Civ. C. 724, 916, 1003, 1008, 1026 et seq., 1122.

Art. 1007. Every holographic will shall, before

it takes effect, be presented to the President of the Tribunal of First Instance of the district in which the succession becomes open. The will shall be opened, if it is sealed. The President shall draw up an official report of the presentation, of the opening and of the condition of the will, and he shall order that the same be deposited in the hands of a notary appointed by him.

(Law of March 25 1899). In the French colonies and in protectorates the holographic will of persons having retained their domicile in France or in another colony shall be presented to the President of the Tribunal of First Instance of the place of death or to the President of the nearest Tribunal. This Magistrate shall open the will and describe its condition in an official report.

The clerk shall make a facsimile of the will and shall place it among the files of his office. The will and a certified copy of the official report of its opening shall then be transmitted in a sealed wrapper, to the Presiding Justice of the Tribunal of the decedent's domicile who shall follow, as to the opening and the deposit, the directions contained in paragraph 1st. The same rules apply in case of the death, in France of persons whose domicile is in the colonies.

If the will is in the mystic form, its presentation, its opening, the description thereof, and its deposit, shall be made in the same manner; but the opening can only take place in the presence of the notaries and witnesses having signed the certificate of superscription, who may be found at the place, or who have been cited. Civ. C. 970, 976, 1008.

Art. 1008. If the will is holographic, or mystic, in the case provided by article 1006, the universal

legatee shall be bound to obtain possession by virtue of an order of the President placed at the foot of a petition, to which shall be annexed the certificate of deposit. Civ. C. 724, 970, 976 et seq., 1006, 1007.

Art. 1009. The universal legatee who takes with an heir to whom the law reserves a portion of the property shall be personally liable to the extent of his share and portion, and as to mortgages to the extent of all the property for the debts and charges of the testator's succession; and he shall be obliged to pay all the legacies, excepting in case of a reduction, as is explained in articles 926 and 927. Civ. C. 610, 724, 793, 802 et seq., 870, 873, 913, 926 et seq., 1012, 1220, 2114 et seq.

Section V.

Of Legacies under Universal Title

Art. 1010. A legacy under universal title is one by which the testator bequeaths a certain portion of his property of which the law allows him to dispose, such as a half, a third, or all his real estate, or all his personal estate, or a fixed portion of all his real estate, or all his personal property.

Any other legacy only constitutes a specific bequest Civ. C. 610, 612, 1011 et seq., 1014 et seq.

Art. 1011. Legatees under universal title are obliged to demand delivery from the heirs to whom a portion of the property is reserved by law: if there are no such heirs, the demand shall be made to the universal legatees, or if there are none, to the heirs entitled to take in the order established in the title *Of Successions*. Civ. C. 724, 731 et seq., 1003, 1014.

Art. 1012. A legatee under universal title is liable in the same manner as a universal legatee for the debts and charges of the testator's succession, personally upon his portion and share, and as mortgagee upon the whole. Civ. C. 610 et seq., 724, 870 et seq., 926, 1009, 1013, 1017, 1020, 1024, 1220, 2114 et seq.

Art. 1013. When a testator has only disposed of a part of the portion which he could dispose of, and has done so by a bequest under universal title, the legatee shall be obliged to pay the specific legacies pro rata with the natural heirs. Civ. C. 724, 870 et seq., 913 et seq., 1017, 1220.

Section VI.

Of Specific Legacies.

Art. 1014. Any ordinary legacy shall give to the legatee, from the day of the testator's death, a right to the thing bequeathed, which right can be transmitted to his heirs or legal representatives.

Nevertheless, the specific legatee cannot take possession of the thing bequeathed, or claim the income thereof or interest thereon until the day when he has brought his action for delivery in the manner specified in article 1011, or from the day when such delivery has been voluntarily consented to. Civ. C. 549 et seq., 583 et seq., 724, 910, 1002, 1005, 1010 et seq., 1013, 1015 et seq., 1038 et seq., 1041, 1122, 1153 et seq.

Art. 1015. The interest on or income of the thing bequeathed shall accrue to the legatee from the day of the death and without any action having been brought by him in Court :

1° When the testator has expressly declared his wish in that respect in the will;

2° When an annuity or a pension has been bequeathed for nourishment. Civ. C. 583 et seq., 610, 1014, 1968 et seq.

Art. 1016. The costs of the action for delivery shall be paid by the succession; however, the legal reserve shall not be reduced in consequence thereof.

The taxes for registration shall be due by the legatee.

All of which shall be done, unless otherwise directed by the will.

Each legacy can be registered separately, but such registration can only benefit the legatee or his legal representatives, and nobody else. Civ. C. 913 et seq., 1011, 1248.

Art. 1017. The heirs of the testator, or other persons responsible for the payment of a legacy, are personally liable for its payment, each one pro rata according to the portion or share of the succession which he takes.

They shall be liable as mortgagees for the whole, to the extent of the value of the real estate of the succession which they may hold. Civ. C. 610, 724, 802, 870, 873, 1009, 1012 et seq., 1020, 1024, 1220, 1221, 2111, 2114 et seq.

Art. 1018. The thing bequeathed shall be delivered, with its necessary accessories, and in the condition in which it is found at the time of the death of the testator. Civ. C. 522 et seq., 546 et seq., 1019, 1038, 1042, 1064, 1245, 1615, 1692.

Art. 1019. When the person who has bequeathed

the ownership of a piece of real estate has added to it thereafter by acquisitions, these acquisitions, even if they adjoin the property, shall not be considered as forming part of the legacy, unless a new bequest has been made.

It shall not be so if improvements or new constructions have been made upon the estate bequeathed, or if there is an inclosure of which the testator has increased the size. Civ. C. 1010, 1018.

Art. 1020. If, before or since the will was made, the property bequeathed has been mortgaged for a debt of the succession, or even for the debt of a third party, or if it is burdened with a usufruct, the person who is obliged to pay the legacy is not bound to free it from the burden, unless he has been directed so to do by an express provision made by the testator. Civ. C. 579, 610 et seq., 809, 871, 874, 1038, 1220 et seq., 1423, 2114 et seq., 2168, 2178.

Art. 1021. When the testator has bequeathed a thing belonging to another person, the legacy is void, whether or not the testator knew that the thing did not belong to him. Civ. C. 1423, 1599, 1935.

Art. 1022. When the legacy applies to a thing defined in a general way, the heir shall not be obliged to give it of the best quality, and he must not offer it of the worst. Civ. C. 1129, 1190, 1246.

Art. 1023. A legacy made to a creditor shall not be considered as offsetting his claim, nor a legacy made to a servant as offsetting his wages. Civ. C. 1234, 1289, 1350, 1352, 1780 et seq., 2101.

Art. 1024. A specific legatee is not liable for the debts of the succession, subject to the reduction of the

legacy, as above stated, and subject to the action of the creditors holding mortgages. Civ. C. 611, 809, 871, 874, 920 et seq., 1221, 1251, 2114 et seq.

Section VII.

Of Testamentary Executors.

Art. 1025. A testator may appoint one or several testamentary executors. Civ. C. 1026, 1028, 1031.

Art. 1026. He may give them the seizin of all or only part of his personal property; but such seizin shall not last for more than one year and a day from his death.

If he has not given it to them, they cannot demand it. Civ. C. 535, 724, 1004, 1006, 1027.

Art. 1027. The heir can put an end to the seizin by offering to hand over to the testamentary executors an amount sufficient to pay the legacies of personal property, or by showing that he has paid them. Civ. C. 535, 1014.

Art. 1028. A person who cannot assume an obligation cannot act as testamentary executor. Civ. C. 513, 1029 et seq., 1124, 1990.

Art. 1029. A married woman can only accept to be a testamentary executrix with the consent of her husband.

If there is a separation of property, either in consequence of a marriage contract or judgment, she may accept with the consent of her husband, or in case of his refusal, by order of the Court, in accordance with what is specified in articles 217 and 219 of the title *Of Marriage*. Civ. C. 213 et seq., 1124, 1529, 1536 et seq., 1990.

Art. 1030. A minor cannot act as testamentary executor, even with the consent of his guardian or curator. Civ. C. 450, 476 et seq., 1028, 1124, 1990.

Art. 1031. Testamentary executors shall have seals affixed if some of the heirs are minors, interdicted persons, or absentees.

They must have an inventory made of the property forming part of the succession in the presence of the presumptive heir, or he having been duly cited.

They must have the personal property sold, if there is not sufficient money to pay the legacies.

They shall see that the will is carried out; and in case of a contest, they can intervene to defend its validity.

At the expiration of the year from the testator's death, they must render an account of their management. Civ. C. 112 et seq., 135, 388 et seq., 489 et seq., 724, 815 et seq., 1034.

Art. 1032. The powers of the testamentary executor do not pass to his heirs. Civ. C. 724, 2003, 2010.

Art. 1033. If several testamentary executors have accepted, one of them may act without the others; and they shall be jointly liable for the amount of the personal property which has been intrusted to them, unless the testator has divided their duties and each of them has confined himself to the duties which have been assigned to him. Civ. C. 1200 et seq., 1995.

Art. 1034. The expenses incurred by the testamentary executor for affixing seals, for the inventory, the accounting, and the other expenses connected with his duties, shall be paid by the succession. Civ. C. 797, 799, 2101.

Section VIII.

Of the Revocation of Wills and as to their Lapsing.

Art. 1035. Wills can only be revoked wholly or in part by a subsequent will or by an instrument executed in the presence of notaries and declaring that the person has changed his intentions. Civ. C. 895, 967 et seq., 1317.

Art. 1036. Subsequent wills which do not revoke previous wills in an express manner, only annul the provisions therein contained which are inconsistent with the subsequent ones or which are contrary thereto. Civ. C. 1035.

Art. 1037. A revocation made in a subsequent will shall produce its full effect, even if the new will remains inoperative owing to the incapacity of the heir appointed or of the legatee, or to their refusal to take. Civ. C. 724, 784, 906 et seq., 909, 1039 et seq., 1157.

Art. 1038. Every conveyance made by the testator of all or part of the thing bequeathed, even by a sale with power of redemption, or by way of exchange, shall cause the revocation of the legacy as to everything that has been conveyed, even if the subsequent conveyance is void and the thing has been returned to the testator. Civ. C. 1018 et seq., 1039 et seq., 1157, 1658 et seq., 1702 et seq.

Art. 1039. Every testamentary provision shall lapse if the person in whose favor it has been made does not survive the testator. Civ. C. 25, 135, 720 et seq., 925, 1040 et seq., 1088 et seq.

Art. 1040. Every testamentary provision made under a condition depending upon an uncertain event, and such that in the intention of the testator this provision should only be carried out if an event takes place or does not take place, shall lapse if the heir appointed or the legatee dies before the condition has been fulfilled. Civ. C. 900, 1168, 1175, 1179, 1183.

Art. 1041. A condition which, according to the testator's intention, only suspends the fulfilment of a provision, does not prevent the heir appointed, or the legatee, from being entitled to a vested interest which can be transmitted to his heirs. Civ. C. 1014, 1168, 1179, 1181 et seq., 1185 et seq.

Art. 1042. A legacy shall lapse if the thing bequeathed has been totally destroyed, during the life of the testator.

The same rule shall apply if it has been destroyed since his death, not owing to any act or fault of the heir, although he may have delayed its delivery, if it would likewise have been destroyed in the hands of the legatee. Civ. C. 617, 1138 et seq., 1148, 1194 et seq., 1234, 1302, 1382 et seq.

Art. 1043. A testamentary provision shall lapse when the heir appointed, or the legatee refuses it or is incapable of taking. Civ. C. 25, 724 et seq., 775, 784, 790, 906 et seq., 954 et seq., 1046.

Art. 1044. Legatees shall be entitled to accretion, in case the legacy is made to several of them jointly.

A legacy shall be considered as having been made jointly when it is made by one and the same provision and when the testator has not specified the share of

the thing bequeathed which each legatee is to take. Civ. C. 786, 1045, 1350, 1352.

Art. 1045. It shall likewise be considered as having been made jointly when a thing, which is not susceptible of being divided without being deteriorated, has been given by the same instrument to several persons, even separately. Civ. C. 572 et seq., 1044, 1217 et seq., 1350, 1352.

Art. 1046. The same causes which, according to article 954 and the two first exceptions of article 955, give the right to bring an action for revocation of a donation inter vivos, shall confer the right to sue for revocation of testamentary provisions. Civ. C. 724, 895, 956 et seq., 1047.

Art. 1047. If such an action is based upon a gross insult to the memory of the testator, it must be brought within one year from the day of the offence. Civ. C. 955 et seq.

Chapter VI.

Of Dispositions allowed in favor of Grandchildren of the Donor or Testator, or of Children of his Brothers and Sisters.

Art. 1048. The property of which fathers and mothers have the right to dispose may be given by them wholly or in part, to one or several of their children by an instrument inter vivos or by will, with the obligation of returning the same to the children born and which may be born in the first degree only

of said donees. Civ. C. 894 et seq., 913 et seq., 1049 et seq., 1081, 1098.

Art. 1049. A disposition made by a decedent in an instrument inter vivos or a will, for the benefit of one or several of his brother or sisters, of all or part of the property forming part of his succession which is not reserved by law, with obligation to return the same to the children born or to be born in the first degree only of the said brothers or sisters who are the donees, shall be valid in case the decedent dies without issue. Civ. C. 894 et seq., 897, 906, 913 et seq., 1081, 1098.

Art. 1050. The dispositions allowed by the two foregoing articles shall only be valid if the obligation to return is made for the benefit of all the children born or who may be born of the heir, without exception or preference by reason of age or sex. Civ. C. 896.

Art. 1051. If, in one of the cases above mentioned, the life tenant subject to restitution in favor of his children, dies leaving children in the first degree and descendants of a child who has died before him, the latter take the portion of the predeceased child by representation. Civ. C. 723, 739 et seq., 745.

Art. 1052. If a child, a brother or a sister, to whom property has been given by instrument inter vivos without being obliged to return the same, accept a new gift, made by instrument inter vivos or by will, on condition that the property previously given shall be subject to that obligation, they shall no longer be allowed to divide the two gifts made for their benefit and to renounce the second, to take

advantage of the first, even should they offer to return the property included in the second gift. Civ. C. 932 et seq., 1119, 1121, 1134.

Art. 1053. The rights of the beneficiaries shall take effect from the time when, for whatever reason it may be, the enjoyment of the child, the brother, or sister who are obliged to effect restitution ceases: the renunciation by anticipation of the enjoyment in favor of the beneficiaries shall not affect the claims of the creditors of the person obliged to make restitution which existed previously to the renunciation. Civ. C. 618, 622, 788, 1057 et seq., 1166, 1167, 1464, 2225.

Art. 1054. The wives of person obliged to make restitution are only entitled to subsidiary remedies against the property to be returned, when the property unencumbered is insufficient for the payment of the capital of dotal funds, and only if the testator has expressly so directed. Civ. C. 952, 954, 963, 1134, 1495, 1531, 1540, 1564, 1572, 2121 et seq., 2125, 2135.

Art. 1055. A person who has disposed of property in the manner authorized by the foregoing articles may, in the same instrument or by a subsequent instrument in public form, appoint a guardian to carry out his wishes: such guardian can only be excused for one of the causes expressed in section VI of chapter II of title *Of Minority, Guardianship and Emancipation.* Civ. C. 427, 450, 894, et seq., 1073, 1180, 1317.

Art. 1056. If none has been named, a guardian shall be appointed upon the application of the life tenant or of his guardian if he is a minor, within a

period of one month from the day of the death of the donor or testator, or from the day the deed of entail has become known since such death. Civ. C. 405 et seq., 606 et seq., 1055, 1057 et seq., 1074.

Art. 1057. The life tenant who has not complied with the foregoing article shall lose the benefit of the entail ; and in such case the right to the property may be declared to belong to the beneficiaries either upon their application, if they are of full age, or that of their guardian or curator if they are minors or interdicted, or upon the application of any relative of the beneficiaries whether they are of full age, minors or interdicted, or even at the instance of the King's Attorney, (*Republic's Attorney*), of the Tribunal of First Instance of the place where the succession opens. Civ. C. 110, 388, 450, 509, 1053.

Art. 1058. After the death of the person who has disposed of property with the obligation of returning it, an inventory of all the property and effects composing his succession shall be made in the ordinary manner, excepting, nevertheless, in case of a specific legacy. The inventory shall contain an estimate at a fair price of the furniture and articles of personal property. Civ. C. 451, 825, 1014, 1059.

Art. 1059. It shall be made at the request of the life tenant, and within the time specified in the title *Of Successions*, in the presence of the guardian appointed to ensure execution. The expenses shall be paid out of the property thus disposed of. Civ. C. 795 et seq., 1055 et seq., 1058 et seq., 1060.

Art. 1060. If the inventory has not been made at the request of the life tenant within the time above

set forth, it shall be drawn up within the following month, upon the application of the guardian appointed to ensure execution, in the presence of the life tenant or his guardian. Civ. C. 1055 et seq., 1058 et seq., 1061.

Art. 1061. If the two foregoing articles have not been complied with, the same inventory shall be made upon the application of the persons mentioned in article 1057, and the life tenant or his guardian and the guardian appointed to ensure execution shall be cited. Civ. C. 1055 et seq.

Art. 1062. A life tenant must make a public sale, after advertising, of all the furniture and articles forming part of the entail with the exception, nevertheless, of those which are mentioned in the two following articles. Civ. C. 452.

Art. 1063. The furniture and other personal articles which are included in an entail under the express condition of keeping them in kind, shall be returned in the condition in which they are at the time of the restitution. Civ. C. 527, 534 et seq., 587, 589, 1062, 1134.

Art. 1064. Animals and implements used for cultivating lands shall be considered as included in the donations inter vivos or wills disposing of such lands; and the life tenant shall only be obliged to have them appraised and estimated for the purpose of returning an equivalent value at the time of the restitution. Civ. C. 522, 524, 1018, 1062, 1350, 1352.

Art. 1065. A life tenant shall, within six months from the day the inventory is closed, invest the ready

money and the funds representing the proceeds of the personal property and effects which have been sold together with those produced by other assets. Such period may be extended if necessary. Civ. C. 455 et seq., 1066 et seq.

Art. 1066. A life tenant shall likewise be obliged to invest the funds recovered from assets which are recuperated and the redemption of annuities: such investments shall be made within three months at the latest from the time he has received the funds. Civ. C. 530, 1065, 1067 et seq., 1911.

Art. 1067. Such investments shall be made in accordance with the directions of the maker of the entail, if he has specified in what kind of property the investments are to be made; if not, they can only be made in real estate or on mortgage. Civ. C. 517 et seq., 1065 et seq., 1133, 2094 et seq., 2103, 2114.

Art. 1068. The investments directed by the foregoing articles shall be made in the presence of the guardian appointed to ensure execution, and at his instance. Civ. C. 1055, 1056.

Art. 1069. Donations or wills providing for a restitution shall be made public by the life tenant or by the guardian appointed to ensure execution; namely in case of real estate, by recording the deeds in the registers of the recorder's office of the place where it is situated; and in case of funds invested on mortgages, by an inscription upon the property subject to such lien. Civ. C. 939 et seq., 1055 et seq., 1070 et seq., 2106, 2134, 2146 et seq., 2148.

Art. 1070. The omission to register a deed containing an entail can be set up, even against

minors or interdicted persons, by the creditors and purchasers, subject to the remedy existing against the life tenant and the guardian to ensure execution: but the minors or interdicted persons cannot be reinstated in case of such omission to register, even if the life tenant and the guardian should be insolvent. Civ. C. 388, 489, 940 et seq., 1071, 1074.

Art. 1071. The omission to record cannot be made good or considered as waived by the knowledge which the creditors or purchasers might have had of the entail in other ways than by the record. Civ. C. 941, 1069 et seq.

Art. 1072. The donees, legatees, and even the lawful heirs of the person who has made the entail, and likewise their donees, legatees or heirs, cannot in any event set up against the beneficiaries the omission to record or inscribe. Civ. C. 724, 894 et seq., 941, 1002, 1069 et seq.

Art. 1073. A guardian appointed to ensure execution shall be personally liable if he has not in every way complied with the rules hereabove laid down for the purpose of identifying the property, of effecting the sale of the personal property, of investing the funds, of making the record and inscription, and generally, if he has not taken all the necessary steps in order that the obligation to return should be well and faithfully fulfilled. Civ. C. 745, 941 et seq., 1055 et seq., 1074.

Art. 1074. If the life tenant is a minor, he cannot, even in case his guardian should be insolvent, be reinstated, when the rules specified in the articles of the present chapter have not been complied with. Civ. C. 388, 450, 942, 1055 et seq., 1070.

Chapter VII.

Of Divisions made by the Father, Mother or other Ascendants between their Descendants.

Art. 1075. Fathers and mothers and other ascendants may make a distribution and division of their property between their children and descendants. Civ. C. 745, 914, 968, 1076 et seq.

Art. 1076. These divisions may be made by donations or by wills, in accordance with the formalities, conditions and rules laid down for donations inter vivos and wills.

The divisions made by donations inter vivos can only apply to present property. Civ. C. 893 et seq., 931 et seq., 943, 1082 et seq., 1130, 1600, 2109.

Art. 1077. If all the property which an ascendant leaves at the time of his death has not been included in the division, such property as has not been included shall be divided according to law. Civ. C. 723 et seq., 815 et seq., 887 et seq.

Art. 1078. If the division is not made between all the children living at the time of the death and the issue of those who have died previously, it shall be entirely void. A new one can be applied for in the legal form, either by the children or their issue who have received nothing or even by those who have have taken part in the division. Civ. C. 723 et seq, 815 et seq., 848, 1076, 1084 et seq.

Art. 1079. A division made by an ascendant can be attacked on account of an undue advantage exceeding one-fourth : it can also be attacked when the result of the division and the provisions made by way of

preciput show that one the coparceners has received a greater portion than the law allows. Civ. C. 853, 887, 890, 892, 913 et seq., 1080, 1118, 1304 et seq., 1313, 1340, 1674 et seq., 2262.

Art. 1080. A child who attacks the division made by the ascendant, for one of the causes expressed in the foregoing article, shall advance the costs of the appraisal; and they shall finally be borne by him, together with the costs of the litigation, if his claim is not admitted. Civ. C. 1677.

Chapter VIII.

Of Donations made by Marriage Contract to the Husband or Wife and to the Issue to be born of the Marriage.

Art. 1081. Every donation inter vivos of present property to the husband and wife or to one of them, even if made in a marriage contract, shall be subject to the general rules applying to donations made in that manner.

It cannot be made in favor of children to be born, excepting in the cases specified in chapter VI of the present title. Civ. C. 894, 896 et seq., 901 et seq., 913, 920, 931, 953, 1048 et seq., 1087, 1090, 1387 et seq.

Art. 1082. Fathers and mothers, other ascendants, collateral relatives of the husband and wife, and even strangers, can dispose of all or part of the property which they may leave at the time of their death, by

a marriage contract, as well for the benefit of the said husband and wife as for the benefit of the children to be born of the marriage, in case the donor should survive the husband or wife who is the donee.

Such a donation, even if made for the benefit of the husband and wife, or of one of them only, shall always be considered, if the donor survives, as having been made for the benefit of the children or issue to be born of the marriage. Civ. C. 898, 943, 947, 959 et seq., 1048 et seq., 1083, 1350, 1352.

Art. 1083. A donation made in the manner specified in the foregoing article shall be irrevocable in this sense only, that the donor can no longer dispose gratuitously of the property contained in the donation, except of small sums given as rewards or otherwise. Civ. C. 894, 1093.

Art. 1084. A donation by marriage contract may be made both of present and future property and of the whole or part thereof, provided a schedule of the debts and obligations of the donor existing at the time of the donation is annexed to the instrument: in such case the donee shall be at liberty at the death of the donor to take the property existing, by abandoning his right to the balance of the donor's property. Civ. C. 943, 947, 948, 1081, 1082, 1083, 1085, 1093.

Art. 1085. If the schedule mentioned in the foregoing article has not been annexed to the instrument containing the donation of the existing and future property, the donee shall be obliged to accept or to refuse the whole donation.

In case of acceptance, he can only claim the property existing at the time of the donor's death, and he shall be obliged to pay all the debts and charges of the estate. Civ. C. 724, 938 et seq., 948, 1009.

Art. 1086. A donation by marriage contract for the benefit of the husband and wife and of the children to be born of their marriage can also be made on condition of paying indiscriminately all the debts and charges of the succession of the donor, or subject to other conditions of which the fulfilment depends upon his wish, whoever may be the person by whom the donation is made : the donee shall be obliged to fulfil such conditions unless he prefers not to take the donation; and if the donor has reserved to himself, in the marriage contract, the right to dispose of an article contained in the donation of his existing property or of a specified sum to be taken out of such property, the article or the sum shall be considered as contained in the donation and shall belong to the donee or his heirs, if the donor dies without having disposed of the same. Civ. C. 943, 944, 959 et seq., 1093, 1170, 1174.

Art. 1087. Donations made by marriage contract cannot be attacked or set aside because they have not been accepted. Civ. C. 932 et seq., 1084, 1086, 1088 et seq.

Art. 1088. Every donation made in view of a marriage shall lapse if the marriage does not take place. Civ. C. 96, 956, 1039 et seq., 1081 et seq., 1084, 1086, 1181.

Art. 1089. Donations made to the husband or wife in the manner prescribed by the foregoing articles 1082, 1084, and 1086, shall lapse if the donor survives the husband or wife who is the donee, or his or her issue. Civ. C. 747, 1039 et seq., 1092 et seq.

Art. 1090. All donations made to the husband and

wife in their marriage contract shall be reduced to the portion which the law allows the donor to dispose of, when his succession opens. Civ. C. 908, 913 et seq., 920 et seq., 923, 1094, 1098, 1525.

Chapter IX.

Of Donations of Husband and Wife, between one another, either by Marriage Contract or during the Marriage.

Art. 1091. A husband and wife may, in their marriage contract, make to each other, reciprocally or the one to the other, such donations as they may deem proper, subject to the rules hereafter laid down. Civ. C. 894, 931, 1081 et seq., 1084, 1092, 1093, 1094, 1098, 1480, 1516, 1525 et seq.

Art. 1092. Every donation inter vivos of existing property made by a husband and wife to one another in their marriage contract shall not be supposed to be made on condition that the donee should survive, unless this condition is formally expressed; and it shall be subject to all the rules and formalities above specified for such sort of donations. Civ. C. 894, 1081 et seq., 1339 et seq., 1398.

Art. 1093. A donation of future property, or of existing and future property, made by a husband and wife in their marriage contract, either by the one to the other or reciprocally, shall be subject to the rules laid down in the foregoing chapter for similar donations made to them by a third party; except that it shall not go to the children born of the marriage,

in case of the death of the husband or wife who is the donee before the one who is the donor. Civ. C. 299, 959 et seq., 1081 et seq.

Art. 1094. (Law of February 14, 1900). A husband or wife may, either by marriage contract or during the marriage in case he or she leaves no children or descendants, dispose in favor of the other in full ownership of everything he or she could dispose of in favor of a stranger.

And in case the husband or wife who is the donor leaves children or descendants, he or she may give to the other, either a quarter in full ownership and the usufruct of another quarter, or only the usufruct of one half of all his or her property. Civ. C. 578 et seq., 913 et seq., 915, 1098 et seq.

Art. 1095. A minor cannot make a donation in a marriage contract to his wife or her husband, whether reciprocal or not, without the consent and the assistance of those whose consent is required for the validity of the marriage; and with such consent he or she may give everything the law allows a husband or wife of full age to give to the other. Civ. C. 148 et seq., 160, 406 et seq., 903, 1309, 1398.

Art. 1096. All donations made by a husband and wife to one another during the marriage, although called inter vivos, shall always be revocable.

The revocation can be made by the wife without being authorized by her husband or by the Court.

Such donations shall not be revoked by the birth of children. Civ. C. 894, 953, 960.

Art. 1097. A husband and wife cannot make to one another during the marriage, either by donation

or by will, any mutual and reciprocal donation by means of one and the same instrument. Civ. C. 968.

Art. 1098. A man or a woman who, having children by a former marriage, contracts a second or subsequent marriage, can only give to the new wife or husband the share of a legitimate child entitled to the smallest portion, and in no case shall these donations exceed one-fourth of the property. Civ. C. 147, 228, 386, 913, 920, 1099 et seq., 1496, 1527.

Art. 1099. A husband and wife cannot give to one another indirectly more than is allowed by the rules above laid down.

Any donation whether disguised or to intermediaries is void. Civ. C. 911, 1094 et seq., 1098, 1100, 1496, 1525, 1527, 1595.

Art. 1100. Donations by the husband or wife to the children or to one of the children of the other born of another marriage, and those made by the donor to relatives of whom the other spouse is the presumptive heir at the time of the donation, shall be considered as made to intermediaries, even if such spouse has not survived the donee who was his relative. Civ. C. 911, 1099, 1113, 1133.

TITLE THIRD

Of Contracts or Conventional Obligations in General.

(Passed February 7, 1804; promulgated 17th of same month.)

Chapter I.

Preliminary Dispositions.

Art. 1101. A contract is an agreement by which one or several persons bind themselves towards one or several other persons to give, to do, or not to do a certain thing. Civ. C. 711, 1108, 1121, 1126, 1134 et seq., 1234 et seq., 1315, 1341, 1370 et seq.

Art. 1102. A contract is *synallagmatic* or *bilateral* when the contracting parties bind themselves mutually towards each other. Civ. C. 1184, 1325, 1341, 1582 et seq., 1702 et seq., 1708 et seq., 1832 et seq.

Art. 1103. It is *unilateral* when one or more persons are bound towards one or more other persons, without any obligation on the part of the latter. Civ. C. 893, 1326 et seq., 1892 et seq., 1905 et seq.

Art. 1104. It is *commutative* when each of the parties binds himself to give or to do a thing which is considered the equivalent of what is given or is done for him.

When the equivalent consists in the chance of a profit or of a loss for each of the parties dependent upon an uncertain event, the contract is *aleatory*. Civ. C. 1582, 1702 et seq., 1708 et seq., 1832 et seq., 1964 et seq., 1968 et seq.

Art. 1105. A contract of *benevolence* is one by

which one of the parties procures to the other an advantage which is purely gratuitous. Civ. C. 711, 893 et seq., 931, 967, 1874 et seq., 1915 et seq., 1984, 2011 et seq., 2077, 2090.

Art. 1106. An *onerous* contract is one which obliges all the parties to give or do a certain thing. Civ. C. 1136 et seq., 1142 et seq., 1146, 1582 et seq., 1702 et seq., 1708, 1832, 1905.

Art. 1107. Contracts, whether they have a special denomination or not, are subject to general rules which are contained in the present title.

The special rules applying to certain contracts are set forth in the titles relating to each of them; and the special rules applying to commercial operations are governed by the laws relating to commerce.

Chapter II.

Of Conditions Essential to the Validity of Contracts.

Art. 1108. Four conditions are essential to the validity of a contract :

The consent of the party who binds himself;

His capacity to contract;

A special object forming the substance of the agreement;

A licit cause for the obligation. Civ. C. 1101, 1109 et seq., 1123 et seq., 1126 et seq., 1130 et seq.

Section I.

Of Consent.

Art. 1109. There is no valid consent if the consent has only been given by error or if it has been obtained by violence or procured by fraud. Civ. C.

180, 783, 887 et seq., 1110, 1117, 1304 et seq., 1356, 1376 et seq., 1641 et seq., 2053.

Art. 1110. Error is not a cause of avoidance of a contract, unless it rests upon the very substance of the thing which is the object thereof.

It is not a cause of avoidance when it only rests upon the person with whom one has the intention of contracting, unless the person himself is the principal cause of the agreement. Civ C. 180 et seq., 783, 894, 1117, 1304, 1356, 1376, 1641 et seq., 2052 et seq., 2058.

Art. 1111. The use of violence against the person who has contracted the obligation is a cause of avoidance, even if it has been exerted by a different person from the one for whose benefit the contract has been made. Civ. C. 180 et seq., 887 et seq., 1112, 1116, 1304, 2053, 2233.

Art. 1112. There is violence when it is of a nature to produce an impression upon a reasonable person and when it can create a fear of exposing his person or fortune to a considerable and present evil.

In such a case the age, the sex and the condition of the person are taken into account. Civ. C. 1113 et seq., 1353.

Art. 1113. Violence is a cause of avoidance of a contract not only when it is exerted against the contracting party, but also when it has been directed against the party's husband or wife or their descendants or ascendants.

Art. 1114. Reverential fear alone towards a father or mother or other ascendant, without the use of any violence, is not sufficient to annul a contract.

Art. 1115. A contract can no longer be attacked on account of violence if, since the violence has ceased, the contract has been approved, either expressly or tacitly, or if the time fixed by law for restitution has been allowed to elapse. Civ. C. 892, 1117, 1304, 1338.

Art. 1116. Fraud is a cause of avoidance of a contract when the devices resorted to by one of the parties are such that it is evident that, without them, the other party would not have made the contract.

Fraud is not presumed and must be proved. Civ. C. 1109, 1117, 2268.

Art. 1117. A contract entered into by error, violence or fraud is not void, as a matter of right; it only gives rise to an action for avoidance or rescision, in the cases and in the manner explained in section VII of chapter V of the present title. Civ. C. 1115, 1304 et seq., 1338, 2268.

Art. 1118. Inadequacy only vitiates the conditoins of certain contracts or with respect to certain persons, as is explained in the same section. Civ. C. 783, 887 et seq., 1079, 1304 et seq., 1313 et seq., 1674 et seq., 2052.

Art. 1119. A person can, as a rule, only bind himself and stipulate for himself in his own name. Civ. C. 1120, 1121, 1165, 1236, 1375 et seq., 1984, 2014, 2077, 2090.

Art. 1120. Nevertheless, a person can answer for a third party by undertaking that the latter shall do something; subject to redress against the person who has so answered for another, or who has undertaken to obtain another's ratification, if the third party

refuses to keep the engagement. Civ. C. 1121, 1142, 1146 et seq., 1165 et seq., 1226 et seq., 1338, 1375, 1998.

Art. 1121. A person may likewise stipulate for the benefit of a third party, when it is the cause of a stipulation which the person makes for himself or of the donation which he makes to another person. The person who has made the stipulation cannot revoke it, if the third party has declared that he wishes to take advantage of it. Civ. C. 894, 1134, 1168 et seq., 1277 et seq., 1690, 1973, 2014.

Art. 1122. A person is supposed to have stipulated for himself and his heirs and legal representatives, unless the contrary is expressed or results from the nature of the contract. Civ. C. 724, 1009, 1012, 1082, 1119, 1166, 1221, 1879, 2017, 2167, 2235, 2237.

Section II.

Of the Capacity of Contracting Parties.

Art. 1123. Every person can make a contract, unless he has been declared to be incapable by law. Civ. C. 1101, 1108, 1124 et seq., 1925.

Art. 1124. Are incapable of contracting :

Minors,

Interdicted persons,

Married women, in the cases specified by law.

And generally all those whom the law forbids to make certain contracts. Civ. C. 25, 213 et seq., 388, 450, 472 et seq., 481 et seq., 489, 502 et seq., 1305 et seq., 1421 et seq., 1427 et seq., 1449, 1530, 1536, 1538, 1576, 1594 et seq., 1840, 2045, 2124.

Art. 1125. Minors, interdicted persons, and married women can only attack contracts made by them for want of capacity in the cases specified by law.

Persons who are capable of binding themselves cannot invoke the incapacity of a minor, of an interdicted person or of a married woman with whom they have made a contract. Civ. C. 225, 1117 et seq., 1124, 1304 et seq., 1338, 1926.

Section III.

Of the Object and Substance of Contracts

Art. 1126. Every contract has for object a thing which a person binds himself to give, or which a person binds himself to do or not to do. Civ. C. 1101, 1108, 1127 et seq., 1134 et seq.

Art. 1127. The simple use or the simple possession of a thing can, in the same manner as the thing itself, be the object of a contract. Civ. C. 578 et seq., 625, 636, 690 et seq., 1709 et seq., 1713 et seq., 1874, 1915, 2071 et seq., 2124 et seq., 2228.

Art. 1128. Things which can be dealt with are the only ones which can form the object of contracts Civ. C. 538 et seq., 650, 714, 1130, 1132, 1134, 1303, 1598, 2226.

Art. 1129. An obligation must have for object a thing which is at least specified as to its nature.

The quantity of the thing may be uncertain, provided it can be determined. Civ. C. 1022, 1101, 1108, 1126, 1131, 1246, 1601.

Art. 1130. Future things can form the object of an obligation.

It is not allowed, however, to renounce a succession

which is not open, nor to make any stipulation with respect to such succession, even with the consent of the person whose succession is concerned. Civ. C. 6, 761, 791, 918, 1082, 1084, 1086, 1091, 1093, 1172, 1389, 1598, 1600.

Section VI.

Of the Cause.

Art. 1131. An obligation without cause, or with a wrongful or illicit cause can have no effect. Civ. C. 1101, 1108, 1131, 1133, 1134, 1235, 1377 et seq., 2012, 2114. 2132.

Art. 1132. An agreement is nevertheless valid, although the cause has not been expressed. Civ. C. 1315.

Art. 1133. A cause is illicit when it is prohibited by law, when it is contrary to good morals or to public order. Civ. C. 6, 686, 815, 900, 946, 1172, 1174, 1235, 1387, 1965, 2063, 2078, 2140, 2220.

Chapter III.

Of the Effect of Obligations.

Section I.

General Provisions.

Art. 1134. Contracts lawfully entered into have the force of law for those who have made them.

They can only be cancelled by mutual consent or for causes allowed by law.

They must be carried out in good faith. Civ. C. 711, 953, 1101, 1108 et seq., 1121, 1135 et seq., 1141 et seq., 1147 et seq., 1152, 1234 et seq., 1865, 2007, 2268.

Art. 1135. Contracts are binding not only as to what is therein expressed, but also as to all the consequences which equity, custom or law impose upon an obligation, according to its nature. Civ. C. 1134, 1156 et seq., 1159, 2007 et seq.

Section II.

Of the Obligation to Give.

Art. 1136. The obligation to give carries with it the obligation to deliver the thing and to keep it until the time of delivery, under penalty of damages against the creditor. Civ. C. 1004, 1011 et seq., 1137 et seq., 1146 et seq., 1302 et seq., 1604 et seq., 1621, 1689 et seq.

Art. 1137. The obligation to look after the preservation of a thing, whether the agreement is for the benefit of one of the parties or for their common benefit, compels the one in charge to give it all the care of a prudent owner.

This obligation is more or less general, in certain contracts of which the effects in this connection are explained under the titles relating to them. Civ. C. 601, 804, 1146, 1182, 1372, 1374, 1728 et seq., 1788, 1874 et seq., 1880, 1882, 1915 et seq., 1927 et seq., 1962, 1991, 2072.

Art. 1138. The obligation to deliver a thing is complete by the sole consent of the contracting parties.

It bestows ownership upon the creditor and places the thing at his risk from the time it should have been delivered, even if the delivery has not taken place, unless a demand has been made upon the debtor to deliver it; in which case the thing remains at the risk of the latter. Civ. C. 711, 929, 938, 1108 et seq., 1139 et seq., 1146 et seq., 1302, 1583,

1589, 1606 et seq., 1656 et seq., 1703, 1788 et seq., 1921, 2244 et seq.

Art. 1139. A demand is made upon the debtor either by writ or by any other instrument which is equivalent thereto, or by the effect of the agreement, when it provides that the debtor shall be compelled to make delivery without any notice and by the simple expiration of the time therefor. Civ. C. 1138, 1145 et seq., 1230, 1656, 1929.

Art. 1140. The effects of an obligation to give or deliver real estate are regulated in the title *Of Sales*, and in the title *Of Preferences and Mortgages*. Civ. C. 938, 941, 1583, 1604 et seq., 2092 et seq., 2103 et seq., 2114, 2166 et seq., 2182.

Art. 1141. If a thing which a person has undertaken to give or to deliver to two persons consecutively is purely personal property, the one of the two who has been placed in actual possession is preferred and remains the owner, even should his title be subsequent as to date, provided however he possesses in good faith. Civ. C. 1583, 1606, 1689 et seq., 2228, 2233, 2268, 2279.

Section III.

Of the Obligation to Do or not to Do.

Art. 1142. Every obligation to do or not to do resolves itself in damages, in case of non-performance on the part of the debtor. Civ. C. 1108, 1126, 1133, 1134, 1146, 1147, 1149, 1189, 1192, 1236 et seq., 1382.

Art. 1143. Nevertheless, a creditor has the right to demand that what has been done in violation of the

agreement should be destroyed; and he can cause himself to be authorized to destroy it at the expense of the debtor, without prejudice to damages, if there is occasion therefor. Civ. C. 1146 et seq.

Art. 1144. A creditor may also, in case of non-performance, be authorized to carry out the obligation himself, at the debtor's expense. Civ. C. 1142 et seq.

Art. 1145. If the obligation consists in not doing a thing, the person who violates such obligation owes damages by the simple fact of the violation. Civ. C. 1139, 1146 et seq.

Section IV.

Of Damages resulting from the Non-Performance of an Obligation.

Art. 1146. Damages are only due when the debtor is duly bound to fulfill his obligation, except, nevertheless, when the thing which the debtor had undertaken to give or to do was not to be given or done before a certain time, which he has allowed to pass. Civ. C. 1136, 1139, 1142 et seq., 1145, 1184, 1226, 1302, 1382 et seq., 1611, 1656 et seq., 1771, 1788 et seq., 1936, 1996.

Art. 1147. A debtor shall be ordered to pay damages, if there is occasion therefor, either on account of non-performance of the obligation or on account of delay in performing it, whenever he does not establish that the non-performance is due to a foreign cause which cannot be charged to him, provided moreover there is no bad faith on his part. Civ. C. 1134, 1229, 1315, 1382, 1807 et seq., 2080.

Art. 1148. No damages shall be due when the debtor has been prevented from giving or doing what he had bound himself to do, or has done what he was not to do, owing to superior force or an an inevitable event. Civ. C. 607, 855, 1302 et seq., 1348, 1631, 1647, 1722, 1730, 1733, 1772 et seq., 1784, 1881 et seq., 1929.

Art. 1149. The damages due to the creditor are ordinarily for the loss which he has sustained or the profit which he has been deprived of, subject to the exceptions and modifications hereinafter specified Civ. C. 1147, 1150, 1151, 1633.

Art. 1150. A debtor is only liable for the damages which have been foreseen or which could have been foreseen at the time of the contract, when it is not owing to fraud on his part that the obligation is not fulfilled. Civ. C. 1109, 1116 et seq., 1151, 1304, 1633 et seq.

Art. 1151. Even in case the non-performance of the agreement is due to the debtor's fraud, the damages shall only be allowed for the immediate and direct consequences of the non-performance of the agreement, in connection with the loss sustained by the creditor or the profit which he has been deprived of. Civ. C. 1109, 1116, 1150.

Art. 1152. When the agreement provides that the party who fails to carry it out shall pay a certain amount as damages, no larger or smaller amount can be awarded to the other party. Civ. C. 1134 et seq., 1226 et seq., 1229 et seq., 1231, 2047.

Art. 1153. (Law of April 7, 1900). In obligations which consist only in the payment of a certain sum, the damages resulting from delay in the perfor-

mance shall be limited to a judgment for the interest allowed by law, subject to the special rules applying to trade and to giving security.

Such damages are due without the creditor being obliged to prove any loss.

They are only due from the day of the legal demand to pay, except in the cases in which the law makes them run, as a matter of right.

The creditor to whom his dilatory debtor has, by his bad faith, caused a loss independently of the delay, may obtain damages in addition to the interest allowed for the delay in paying the debt. Civ. C. 456, 474, 586, 609, 612, 792, 856, 928, 1139, 1145 et seq., 1152 et seq., 1155, 1207, 1378, 1440, 1445, 1473, 1548, 1579, 1620, 1652, 1846, 1904, 1907, 1996, 2001, 2028.

Art. 1154. The interest due upon a capital can produce interest either by a writ of demand or by special agreement, provided the interest claimed by the demand or by virtue of the agreement shall be due, at least for one whole year. Civ. C. 1134, 1153, 1155, 1378.

Art. 1155. Nevertheless, the revenues due, such as farm rents, rents, interest on perpetual or life annuities bear interest from the day of the demand or of the agreement.

The same rule applies to fruits to be returned, or if interest is paid by a third party to creditors, for account of the debtor. Civ. C. 549, 583 et seq., 1134, 1153, 1154, 1652.

Section V.

Of the Interpretation of Contracts.

Art. 1156. The common intention of the contracting parties should be sought in contracts, rather than being guided by the literal meaning of the words. Civ. C. 1109, 1134, 1135, 1175, 1602, 2048.

Art. 1157. When a clause is susceptible of two interpretations, it shall be construed preferably according to the meaning which may produce some effect, rather than according to the meaning which would produce none.

Art. 1158. The words susceptible of two interpretations shall be taken in the meaning which best suits the subject matter of the contract.

Art. 1159. What is ambiguous shall be interpreted according to the customs of the country in which the contract was made. Civ. C. 590, 608, 645, 674, 1648, 1753, 1757 et seq., 1777.

Art. 1160. The clauses which are customary in a contract shall be supplemented, although they have not been inserted. Civ. C. 1135, 1159, 1626.

Art. 1161. All the clauses of a contract are to be interpreted with reference to one another, by giving to each one the meaning derived from the whole instrument.

Art. 1162. In case of doubt, the contract shall be construed against the party who has made the stipulation and in favor of the one who has assumed the obligation. Civ. C. 1602.

Art. 1163. However general may be the terms in which a contract is worded, it shall only apply to the

matters which the parties appear to have intended to deal with. Civ. C. 2048 et seq.

Art. 1164. When, in a contract, a case has been mentioned to explain the obligation, it shall not be supposed that it was thereby intended to limit the scope of the contract, which, as a matter of right, shall apply to the cases not specified.

Section VI.

Of the Effect of Contracts in connection with Third Parties.

Art. 1165. Contracts only produce effect between the contracting parties: they do not harm third parties, and do not benefit them, except in the case specified in article 1121. Civ. C. 1134, 1166 et seq., 1321, 1351, 1599, 2005, 2009, 2051.

Art. 1166. Nevertheless, creditors can take advantage of all the rights and causes of action which belong to their debtor, with the exception of those which are exclusively reserved to the person. Civ. C. 406, 421, 618, 622, 631, 634, 788, 820, 841, 857, 865, 877 et seq., 882, 921, 1053, 1446 et seq., 1464 et seq., 1666, 2078, 2081, 2085, 2092 et seq., 2205, 2225.

Art. 1167. They can also attack in their own name the acts performed by their debtor, whereby he has defrauded them of their rights.

They must, nevertheless, as to the rights belonging to them and mentioned in the title *Of Successions* and in the title *Of Marriage Contracts and of the Respective Rights of Husband and Wife*, comply with the rules which are therein laid down. Civ. C. 180, 184,

225, 618, 622 788, 857, 865, 878, 882, 921, 957, 1053, 1065 et seq., 1328, 1394, 1410, 1447, 1464, 2095, 2103. 2225.

Chapter IV.

Of the Various Kinds of Obligations.

Section I.

Of Conditional Obligations.

§ 1. *Of Conditions in General and of the Various Kinds of the Same.*

Art. 1168. An obligation is conditional when it is made to depend upon a future and uncertain event, either in case it is suspended until the event happens, or in case it should be rescinded in consequence of the event taking place or not taking place. Civ. C. 1040 et seq., 1181, 1183 et seq., 2125, 2257.

Art. 1169. A *fortuitous* condition is one which depends upon chance and in no way upon the will of the creditor or of the debtor. Civ. C. 1148, 1306.

Art. 1170. A *potestative* condition is one which makes the fulfilment of a contract depend upon an event which one or the other of the contracting parties has the power to bring about or to prevent. Civ. C. 944, 1086, 1174.

Art. 1171. *A mixed* condition is one which depends at the same time upon the will of the contracting parties and upon the will of a third party

Art. 1172. Every condition providing for an impossible thing or which is contrary to good morals or

prohibited by law, is void and annuls the contract which is based upon it. Civ. C. 6, 686, 815, 900, 946, 965, 1133, 1173 et seq., 1387 et seq., 1811, 1833, 2063.

Art. 1173. A condition not to do an impossible thing does not vitiate the obligation contracted upon such condition.

Art. 1174. Every obligation is void when it has been contracted subject to a potestative condition on the part of the person who binds himself. Civ. C. 944, 1086, 1170, 1178, 1583, 1591, 1659 et seq.

Art. 1175. Every condition must be fulfilled in the manner in which the parties have, in all likelihood, desired or intended that it should be. Civ. C. 1135, 1156 et seq., 1176 et seq., 1602, 2049.

Art. 1176. When an obligation is contracted on condition that an event shall happen within a fixed time, such condition is supposed not to have been fulfilled when the time has elapsed without the event having taken place. If no time has been fixed, the condition can always be fulfilled, and it is only supposed not to have been fulfilled when it has become certain that the event will not take place. Civ. C. 1040 et seq., 1177, 1350, 1352.

Art. 1177. When an obligation is contracted under condition that an event shall not take place within a fixed time, such condition is fulfilled when the time has expired without the event having taken place: it is also fulfilled if, before such time, it has become certain that the event will not take place; and if no time has been fixed, it is only fulfilled when it has become certain that the event will not happen. Civ. C. 1176.

Art. 1178. A condition is supposed to be fulfilled when the debtor who is bound by such condition, is the one who has prevented it from being fulfilled. Civ. C. 1174, 1350, 1352, 1383.

Art. 1179. A condition which is fulfilled has a retroactive effect to the day upon which the obligation has been contracted. If the creditor dies before the condition is fulfilled, his rights descend to his heir. Civ. C. 724, 1040 et seq., 1122, 1181 et seq.

Art. 1180. The creditor may, before the condition is fulfilled, take all the necessary steps for the preservation of his rights. Civ. C. 779, 820 et seq., 1166, 1324, 1423, 1454, 2134, 2257.

§ 2. *Of the Suspensive Condition.*

Art. 1181. An obligation assumed under a suspensive condition is one which depends either upon a future and uncertain event, or upon an event which has actually taken place but is still unknown to the parties.

In the first case the obligation can only be enforced after the event.

In the second case the obligation is binding from the time it has been assumed. Civ. C. 1168, 1176 et seq., 1182, 1185 et seq., 1258, 1583 et seq., 1584, 1588, 2125, 2257.

Art. 1182. When an obligation has been contracted under a suspensive condition, the thing which is the subject matter of the contract remains at the risk of the debtor who has only bound himself to deliver it in case the condition takes place.

If the thing has been entirely destroyed, without

any fault on the part of the debtor, the obligation ceases.

If the thing has been deteriorated not owing to any fault of the debtor, the creditor has the choice either between cancelling the obligation or insisting upon having the thing in the condition in which it is, without reduction in the price.

If the thing has been deteriorated owing to the fault of the debtor, the creditor has the right either to cancel the obligation or to claim the thing in the condition in which it is, and damages in addition. Civ. C. 1134, 1136, 1146 et seq., 1149, 1179, 1181, 1184, 1234, 1302 et seq., 1383, 1644 et seq.

§ 3. *Of the Resolutive Condition.*

Art. 1183. A resolutive condition is one which, when it is fulfilled, brings about the cancellation of the obligation, and puts things back in the same state as if the obligation had not existed.

It does not suspend the fulfilment of the obligation : it only obliges the creditor to return what he has received, if the event provided for by the condition takes place. Civ. C. 1176 et seq., 1234, 1584, 1610, 1654 et seq., 2125.

Art. 1184. A resolutive condition is always implied in synallagmatic contracts, in case one of the two contracting parties does not fulfil his engagement.

In such case the contract is not cancelled as a matter of right. The party complaining that the obligation has not been fulfilled has the choice either between compelling the other party to carry out the agreement, when it is possible, or demanding its cancellation, with damages.

The cancellation must be applied for in Court

and the defendant may be given time, according to circumstances. Civ. C. 952, 954, 956, 1102, 1139, 1142, 1146 et seq., 1176 et seq., 1185 et seq., 1244, 1610, 1654 et seq., 1656, 1741.

Section II.

Of Obligations with a Time Clause.

Art. 1185. Time differs from a condition in that it does not suspend the obligation, but only delays its fulfilment. Civ. C. 1101, 1134, 1168, 1181 et seq., 1230, 1244, 1258, 1292, 1888 et seq., 1902, 2257.

Art. 1186. What is only due at a certain time cannot be claimed before the expiration of such time; but what has been paid in advance cannot be recovered. Civ. C. 1134, 1180, 1235, 1753, 1888, 1899, 1902, 1944, 1980.

Art. 1187. Time is always presumed to be stipulated in favor of the debtor, unless it appears from the stipulation or from the circumstances that it has also been agreed upon in favor of the creditor. Civ. C. 1156 et seq., 1258, 1911, 1944, 1991.

Art. 1188. A debtor can no longer claim the benefit of time, when he has become bankrupt or when by his own act he has lessened the safeguards which he had given to his creditor by the contract. Civ. C. 1184, 1244, 1383, 1613, 1741, 1912 et seq., 2030, 2032-2°, 2037, 2166.

Section III.

Of Alternative Obligations.

Art. 1189. The debtor of an alternative obligation is released by the delivery of one of the two things

which were included in the obligation. Civ. C. 1129, 1190 et seq.

Art. 1190. The choice belongs to the debtor, unless it has been expressly granted to the creditor. Civ. C. 1134, 1162, 1196, 1602.

Art. 1191. The debtor can exonerate himself by delivering one of the two things promised; but he cannot compel the creditor to receive a part of one and a part of the other. Civ. C. 1220 et seq., 1243 et seq., 1604 et seq.

Art. 1192. An obligation is purely single, although contracted in the alternative, if one of the two things promised could not form the subject matter of the obligation. Civ. C. 1128.

Art. 1193. An alternative obligation becomes purely single if one of the things promised is destroyed and can no longer be delivered, even owing to the fault of the debtor. The price of such thing cannot be offered in its stead.

If both things are destroyed and the debtor is to blame as to one of them, he must pay the price of the one which was destroyed last. Civ. C. 1042, 1302, 1383, 1601.

Art. 1194. When, in the cases specified in the foregoing article, the choice has been left to the creditor under the agreement;

Either one of the things only is destroyed; and then, if the debtor is not to blame, the creditor shall receive the one which remains; if the debtor is to blame, the creditor may ask for the thing which remains or the price of the thing which has been destroyed;

Or both things are destroyed; then, if the debtor

is at fault with respect to both, or even only with respect to one, the creditor may ask for the price of one or the other, at his choice. Civ. C. 1302 et seq., 1382.

Art. 1195. If the two things are destroyed, without the debtor being at fault, and before a demand has been made upon him, the obligation ceases, in accordance with article 1302. Civ. C. 1139, 1302, 1382.

Art. 1196. The same principles apply in case there should be more than two things included in the alternative obligation.

Section IV.

Of Joint and Several Obligations.

§ 1. *Of Joint and Several Liability between Creditors.*

Art. 1197. An obligation is joint and several between several creditors when the instrument gives to each one of them expressly the right to demand payment of the whole claim, and payment made to one of them exonerates the debtor, even if the benefit derived from the obligation was to be apportioned or divided between the various creditors. Civ. C. 1134, 1198, 1200 et seq., 1224 et seq., 1431.

Art. 1198. The debtor can select to pay one or the other of the creditors, under a joint and several obligation, so long as he has not received notice by proceedings brought by one of them.

Nevertheless, a release which is only given by one of the creditors under a joint and several obligation only releases the debtor for the share of such creditor. Civ. C. 1224, 1282 et seq., 1365.

Art. 1199. Every act which suspends prescription with respect to one of the creditors jointly and severally liable produces the same effect as regards the others. Civ. C. 710, 1206, 1212, 2242 et seq., 2249.

§ 2. *Of Joint and Several Debtors.*

Art. 1200. Debtors are jointly and severally liable when they are bound, in connection with a same thing, in such a way that each one of them may be held for the whole and payment made by a single one releases the others as against the creditor. Civ. C. 1197, 1219, 1222 et seq., 1280, 1281, 1284, 1285, 1294, 1301, 1365, 2002, 2249.

Art. 1201. An obligation may be joint and several, although one of the debtors is obliged to pay for the same thing in a different manner: for instance, if one is only bound conditionally, whereas the obligation of the other is absolute, or if one has been given time which has not been granted to the other. Civ. C. 1168 et seq., 1185 et seq.

Art. 1202. A joint and several obligation cannot be presumed : it must be expressly stipulated.

This rule only ceases in case the joint and several obligation exists, as a matter of right, in consequence of a provision of the law. Civ. C. 395, 396, 1033 et seq., 1200, 1214, 1218 et seq., 1222, 1382, 1383, 1384, 1442, 1487, 1734, 1852, 1862, 1887, 1995, 1999, 2002, 2021, 2025 et seq., 2030, 2168.

Art. 1203. The creditor of an obligation contracted jointly and severally can assert his claim against such one of the debtors whom he chooses to select, and the latter cannot set up the benefit of division by way of defence. Civ, C. 1210 e seq., 1225, 2021.

Art. 1204. The proceedings brought against one of the debtors do not prevent the creditor from instituting similar ones against the others. Civ. C. 1198, 1200.

Art. 1205. If the thing due has been destroyed owing to the fault of one of more of the debtors, jointly and severally liable, or after a demand has been made, the other co-debtors are not released from the obligation to pay the price of the thing; but they are not liable for damages.

The creditor can only obtain damages from the debtors owing to whose fault the thing has been destroyed and from those upon whom a demand had been made. Civ. C. 1138, 1146 et seq., 1182, 1232, 1302 et seq., 1383.

Art. 1206. Proceedings instituted against one of the creditors jointly and severally liable suspend prescription with respect to all. Civ. C. 1197, 1199, 1212, 2242 et seq. 2249.

Art. 1207. A demand for interest made upon one of the debtors jointly and severally liable causes interest to run against all. Civ. C. 1139, 1153, et seq., 1201, 1206, 1905, 1907.

Art. 1208. A co-debtor jointly and severally liable against whom proceedings have been brought by a creditor can set up all the defences resulting from the nature of the obligation and all those which are personal to him, as well as those which are common to all the co-debtors.

He cannot set up the defences which are purely personal to some of the other co-debtors. Civ. C. 1109, 1131 et seq., 1166, 1213, 1225 et seq., 1280 et seq., 1294, 1301, 1365, 2012, 2036.

Art. 1209. When one of the debtors becomes the sole heir of the creditor, or when the creditor becomes the sole heir of one of the debtors, the merger only wipes out the claim jointly and severally due for the part and portion of the debtor or creditor. Civ. C. 724, 870, 873, 1294, 1300 et seq., 2035.

Art. 1210. A creditor who consents to a division of the debt, with respect to one of the co-debtors, retains the cause of action upon the joint and several obligation against the others, but only after deducting the share of the debtor whom he has exonerated from the joint and several obligation. Civ. C. 1184, 1211 1224, 1285, 1863, 2025 et seq.

Art. 1211. The creditor who receives separately the share of one of the debtors without reserving in his receipt the joint and several obligation, or his rights in general, only renounces the joint and several obligation with respect to such debtor.

The creditor is not supposed to release the debtor from the joint and several obligation when he receives from him a sum equal to the share for which he is liable, if the receipt does not show that it is *for his share.*

The same rule applies to an action brought against one of the co-debtors simply *for his share* if such co-debtor has not admitted the claim, or if a judgment has not been granted against him. Civ. C. 1210, 1350, 1352.

Art. 1212. A creditor who receives separately and without reserve from one of the co-debtors his portion of the arrears or interest on the debt, only loses his right to the joint and several obligation for the arrears or interest due, and not for those to become

due, nor with respect to the capital, unless the separate payments have been continued during ten consecutive years. Civ. C. 584 et seq., 1211, 1350, 1352.

Art. 1213. An obligation contracted jointly and severally towards a creditor is divided, as a matter of right, between the debtors who are only liable between themselves for the share or part of each one. Civ. C. 875, 1217, 1220, 1251, 2249.

Art. 1214. The co-debtor of a debt jointly and severally due who has paid it in full can only claim from the others the parts or shares of each one of them.

If one of them is insolvent, the loss occasioned by his state of insolvency is apportioned pro rata among all the other co-debtors who are solvent and the one who has made the payment. Civ. C. 875, 876, 885, 1213, 1215 et seq. 2026.

Art. 1215. In case the creditor has renounced the cause of action upon a joint and several obligation with respect to one of the debtors, if one or more of the other co-debtors become insolvent, the shares of those who are insolvent shall be apportioned pro rata between all the debtors, even between those who have been previously released by the creditor from the joint and several obligation. Civ. C. 876, 2027.

Art. 1216. If the matter for which the debt has been contracted jointly and severally only concerns one of the debtors jointly and severally liable, such debtor shall be liable towards the other co-debtors for the whole debt, and they shall only be considered, so far as he is concerned, as his sureties. Civ. C. 1200, 1431 et seq., 2011, 2028 et seq., 2033.

Section V.

Of Divisible and Indivisible Obligations.

Art. 1217. An obligation is divisible or indivisible according to whether its object is a thing which in its delivery or a fact which in its fulfilment is or is not susceptible of a division physically or in theory. Civ. C. 700, 1202, 1213, 1220, 1221, 1668, 2114, 2249.

Art. 1218. An obligation is indivisible although the thing or the fact which forms its object is divisible by its nature, if the manner in which it is considered as an obligation does not render a partial fulfilment possible. Civ. C. 1221-5°, 2083.

Art. 1219. A joint and several obligation resulting from a stipulation does not make it indivisible in its character. Civ. C. 1197 et seq., 1200, 1222.

§ 1. *Of the Effects of Divisible Obligations.*

Art. 1220. An obligation which is susceptible of being divided must be fulfilled as regards the creditor and debtor as if it were indivisible. The divisibility only operates as to their heirs who can only claim the debt or are only bound to pay, to the extent of the parts which belong to them or for which they are liable as representing the creditor or the debtor. Civ. C. 724, 870 et seq., 1009, 1012, 1033, 1213, 1221, 1233, 1244, 1668 et seq., 1939, 2083.

Art. 1221. The principle established in the foregoing article is subject to exceptions, with respect to the heirs of the debtor :

1° When the debt is secured by a mortgage;

2° When a definite thing is due;

3° In case of an alternative debt for things at the choice of the creditor, of which one is indivisible;

4° When one of the heirs alone is made responsible by the instrument for the fulfilment of of the obligation;

5° When it appears, either from the nature of the agreement or from the thing forming the object thereof or from the purpose sought by the contracting parties was that the debt should not be partially satisfied.

In the three first cases, the heir who owns the thing due or the property mortgaged for the debt can be sued for the whole with respect to the thing due or the property mortgaged, subject to his remedy against his co-heirs. In the fourth case, the heir who is alone responsible for the debt, and in the fifth case, each heir can also be sued for the whole; subject to his remedy against his co-heirs. Civ. C. 872 et seq., 1020, 1134 et seq., 1156, 1175, 1189 et seq., 1192, 1218, 1221 et seq., 1444 et seq., 1302, 1939, 2083, 2103, 2114.

§ 2. *Of the Effects of Indivisible Obligations.*

Art. 1222. Each one of those who have jointly contracted an indivisible debt is liable for the whole, although the obligation has not been contracted jointly and severally. Civ. C. 709, 1200 et seq., 1232, 1668, 1939, 2083, 2114, 2249.

Art. 1223 The same rule applies with respect to the heirs of the person who has contracted a similar obligation. Civ. C. 724 et seq., 872 et seq., 1122, 1213, 1939.

Art. 1224. Each heir of the creditor can demand that the indivisible obligation be entirely fulfilled.

He cannot alone cancel the whole debt : he cannot alone receive the price instead of the thing itself. If one of the heirs has alone cancelled the debt or received the price of the thing, his co-heir can only claim the indivisible thing, by taking into account the portion of the co-heir who has given the release or received the price. Civ. C. 1197 et seq., 1203, 1210 et seq., 1239, 1282 et seq., 1668 et seq., 1939.

Art. 1225. An heir of the debtor who is sued for the whole obligation can ask for time to join his co-heirs in the action, unless the debt is of such a nature that it can only be satisfied by the heir who has been sued and against whom alone a judgment can then be given, subject to his remedy for an indemnity against his co-heirs. Civ. C. 870, 873, 1203 et seq., 1232, 1670.

Section VI.

Of Obligations with Penalties.

Art. 1226. A penalty is a clause by which a person, to secure the fulfilment of an agreement, binds himself to something in case it is not fulfilled. Civ. C. 1142, 1146 et seq., 1152, 1227, 1230, 1231, 1978 2047.

Art. 1227. The avoidance of the principal obligation carries with it the avoidance of the penalty.

The avoidance of the penalty does not carry with it the avoidance of the principal obligation. Civ. C. 1120, 1172 et seq.

Art. 1228. A creditor, instead of claiming the penalty stipulated against the debtor, upon whom a

demand has been made, can proceed to obtain the fulfilment of the principal obligation. Civ. C. 1139, 1144.

Art. 1229. A penalty is the compensation for the damages which the creditor sustains, on account of the non-fulfilment of the principal obligation.

He cannot at the same time claim the principal and the penalty, unless it has been stipulated, simply in case of delay. Civ. C. 1142 et seq., 1146 et seq., 1152, 1382, 1610, 2047.

Art. 1230. Whether the original obligation fixes a time within which it must be fulfilled or whether it does not, the penalty is only due when a demand has been made upon the person who has undertaken, either to make delivery or to receive or to do a certain thing. Civ. C. 1139, 1145 et seq., 1153, 1185 et seq.

Art. 1231. The penalty can be modified by the Judge when the principal obligation has been partially fulfilled. Civ. C. 1152, 1244.

Art. 1232. When the original obligation providing a penalty applies to an indivisible thing, the penalty is due in case of a violation of the agreement by any single one of the heirs of the debtor, and it can be claimed either for the whole, from the one who has violated the agreement, or from each of the coheirs for his share and part, or for the whole against the mortgaged property, subject to the remedy against the one who has caused the penalty to be incurred. Civ. C. 724, 870 et seq., 1205, 1222 et seq., 2114 et seq., 1382 et seq.

Art. 1233. When the original obligation providing a penalty is divisible, the penalty is only incurred by the heir of the debtor who has violated the obligation and only for the share for which he was liable as to the

principal obligation, and no action shall lie against those who have fulfilled it.

An exception is made to this rule when the penalty having been added for the purpose that the payment should not be made partially, a co-heir has prevented the obligation from being wholly fulfilled. In such case, the entire penalty can be claimed from him and only their part from the other heirs, subject to their remedy. Civ. C. 1218, 1220 et seq., 1221-5°.

Chapter V.

Of the Extinction of Obligations.

Art. 1234. Obligations are extinguished :

By payment,

By novation,

By voluntary release,

By compensation,

By merger,

By the loss of the thing,

By avoidance or rescission,

By the effect of a clause producing rescission, as explained in the foregoing chapter,

And by prescription, which forms the subject of a special title. Civ. C. 1183 et seq., 1235 et seq., 1271 et seq., 1282 et seq., 1289 et seq., 1300 et seq., 1304 et seq., 2219 et seq.

Section I.

Of Payment.

§ 1. *Of Payment in General.*

Art. 1235. Every payment presupposes a debt : what has been paid without being due is subject to recovery.

One is not entitled to recover in case of natural obligations which have been voluntarily paid. Civ C. 1110, 1131, 1183, 1186, 1214, 1304, 1340, 1376, 1377, 1378, 1488, 1569, 1705, 1967, 2030, 2186, 2198.

Art. 1236. An obligation can be paid by any person who has an interest therein, such as a co-obligee or a surety.

The obligation can even be paid by a third party who has no interest therein, provided such party acts in the name of and for the purpose of releasing the debtor, or if he acts in his own name, provided he is not subrogated to the rights of the creditor. Civ. C. 1119 et seq., 1165, 1214, 1237, 1249 et seq., 1372 et seq., 2014, 2028.

Art. 1237. The obligation to do a thing cannot be discharged by a third party against the wish of the creditor, when the latter is interested in having it fulfilled by the debtor himself. Civ. C. 1134, 1142 et seq., 1763 et seq., 1793 et seq., 1795.

Art. 1238. In order that a payment should be valid one must be the owner of the thing given in payment and be capable of conveying it.

Nevertheless, the payment of a sum of money or of some other thing which is consumed by use, cannot be recovered from the creditor who has consumed it in good faith, although the payment has been made by a person who was not the owner or who was not capable of conveying it. Civ. C. 587, 1123 et seq., 1138, 1240, 1376 et seq., 1532, 1878, 1892, 2268, 2279.

Art. 1239. A payment must be made to the creditor or to somebody empowered by him or au-

thorized by the Court or by law to receive it on his behalf.

A payment made to a person who had no power to receive it for the creditor is valid, if the creditor ratifies it or has had the benefit of it. Civ. C. 389, 450 et seq., 509, 1121, 1239, et seq., 1247, 1257 et seq., 1338, 1421 et seq., 1428, 1449, 1531, 1549, 1937, 1984, 1985.

Art. 1240. A payment made in good faith to the person who is the holder of a claim is valid, even if the possessor is afterwards deprived of it. Civ. C. 1239, 1377, 1626 et seq., 1690.

Art. 1241. A payment made to a creditor is not valid if he was incapable of receiving it, unless the debtor proves that the thing paid has turned to the advantage of the creditor. Civ. C. 225, 450, 482, 499, 509 et seq., 513, 1123 et seq., 1238, 1306, 1312, 1428, 1449, 1531, 1539, 1549.

Art. 1242. A payment made by a debtor to his creditor, notwithstanding an attachment or a caveat, is not valid against the creditors who have issued the attachment or caveat; such creditors may, according to their rights, compel him to pay a second time, subject, in such case only, to his remedy against the creditor. Civ. C. 1298, 1944, 2093.

Art. 1243. A creditor cannot be compelled to receive a thing different from the one which is due to him, although the value of the thing offered is the same or even greater. Civ. C. 1134, 1379, 1471, 1875, 1895, 1932, 2038.

Art. 1244. A debtor cannot compel his creditor to receive partial payment of his debt, even when divisible.

The Judges may, however, in consideraton of the debtor's position, and by making use of such power with great reserve, grant moderate delays for the payment and stay the proceedings, all things remaining in the state in which they are. Civ. C. 1184 et seq., 1188, 1217 et seq., 1258, 1900, 2212.

Art. 1245. A debtor of a special and definite thing is released by the delivery of the thing in the condition in which it is at the time of delivery, provided any deterioration it has suffered was not occasioned by his act or owing to his fault, nor by the act or owing to the fault of the persons for whom he is responsible, or unless a demand was made upon him before the deterioration took place. Civ. C. 1018, 1136, et seq., 1148, 1247, 1264, 1302 et seq., 1379, 1382 et seq., 1614, 1933.

Art. 1246. If the debt is for a thing which is only specified as to its kind, the debtor, in order to be released, is not obliged to give the best thing of the kind; but he cannot offer the worst thing of the kind. Civ. C. 1022, 1134.

Art. 1247. The payment must be made at the place designated in the agreement. If the place has not been designated, the payment, if it is for a special and definite thing, shall be made at the place where the thing forming the subject matter of the obligation was at the time such obligation was contracted.

With the exception of these two cases, the payment must be made at the residence of the debtor. Civ. C. 102, 1134 et seq., 1187, 1258, 1264, 1296, 1609, 1651, 1742, 1942.

Art. 1248. The expenses connected with the pay-

ment are borne by the debtor. Civ. C. 1260, 1593, 1608, 1942.

§ 2. *Of Payment with Subrogation.*

Art. 1249. Subrogation to the rights of a creditor for the benefit of a third person who pays him is either conventional or legal. Civ. C. 874 et seq., 1236, 1250 et seq., 1689 et seq., 2029, 2037.

Art. 1250. Such subrogation is conventional :

1° When the creditor receiving payment from a third person subrogates him to his rights, causes of action, preferences or mortgages against the debtor : such subrogation must be express and made at the same time as the payment;

2° When the debtor borrows a sum for the purpose of paying his debt and of subrogating the lender to the rights of the creditor. In order that such a subrogation should be valid, the instrument by which the loan is made and the receipt therefor must be drawn up before notaries; in the instrument by which the loan is made it shall be declared that the sum has been borrowed to effect the payment and in the receipt it shall be declared that the payment has been effected with the funds furnished for that purpose by the new creditor. Such subrogation takes place independently of the co-operation of the creditor. Civ. C. 874, 1236 et seq., 1251 et seq., 1256, 1322, 1328, 1690, 2029, 2102, 2103, 2112.

Art. 1251. Subrogation takes place as a matter of right :

1° For the benefit of the person who, being himself a creditor, pays another creditor, who is preferred to him on account of preferences or mortgages;

2° For the benefit of the purchaser of a piece of real estate who applies the price of his purchase to the payment of the creditors to whom such hereditament was mortgaged;

3° For the benefit of the person who, being bound with others or for others to the payment of the debt, was interested in wiping it out;

4° For the benefit of the heir with benefit of inventory who has paid with his own money the debts of the succession. Civ. C. 611, 802 et seq., 873 et seq., 1200, 1214 et seq., 1419, 1424, 1431 et seq., 1437, 1470, 1493, 1852, 2028 et seq., 2095, 2114, 2134, 2166, 2178, 2191.

Art. 1252. The subrogation established by the foregoing articles takes place as well with regard to the sureties as the debtors : it cannot affect the rights of the creditor when he has only been paid in part; in such case he can enforce his rights for what remains due to him, in preference to the person from whom he has only received partial payment. Civ. C. 2011.

§ 3. *Of Imputation of Payments.*

Art. 1253. A debtor who owes several debts has the right when he pays to declare what debt he means to discharge. Civ. C. 1254 et seq., 1848 et seq., 1906, 2081, 2085.

Art. 1254. A debtor who owes a debt which bears interest or produces a revenue cannot, without the consent of the creditor, apply the payment which he makes to the reduction of the capital in preference to the revenue or interest : the payment made on account of capital and interest but which is not in full, shall first be applied to the payment of the interest. Civ. C. 1134, 1905 et seq., 2081, 2085.

Art. 1255. When the debtor who owes several debts has accepted a receipt by which the creditor has applied what he has received to one of such debts specially, the debtor can no longer ask that it be applied to a different debt, unless there has been fraud or surprise on the part of the creditor. Civ. C. 1109 et seq., 1116 et seq.

Art. 1256. When the receipt does not bear any indication, the payment shall be applied to the debt which the debtor had at that time the greatest interest in wiping out among those which were likewise due; if not, to the debt which has become due, although it may be less burdensome than those which have not fallen due.

If the debts are of the same nature, preference is given to the one which has been the longest due : if all things are equal, the apportionment is made pro rata. Civ. C. 1297, 1848.

§ 4. *Of Tenders of Payment and legal Deposits.*

Art. 1257. When a creditor refuses to receive payment, the debtor can make him an actual tender, and upon the refusal of the creditor to accept it, he may deposit the sum or the thing offered.

Actual tenders, followed by a deposit, release the debtor : they take the place of payment with respect to him, when they have been legally made and the thing so deposited remains at the risk of the creditor. Civ. C. 1258 et seq., 1961, 2186.

Art. 1258. In order that an actual tender should be valid, it is necessary :

1° That it should be made to a creditor who has the capacity of receiving it, or to a person who has power to receive it for him;

2° That it should be made by a person who is capable of making the payment;

3° That it should be for the entire sum due, with the revenue or interest due, the liquidated costs, and a sum for the unliquidated costs, to be completed if necessary;

4° That the time of maturity should have come, if it has been stipulated in favor of the creditor;

5° That the condition under which the debt has been contracted has occurred ;

6° That the tender should be made at the place agreed upon for the payment, and if no special stipulation has been made as to the place of payment, that the tender be made to the creditor personally or at his residence or at the residence which he has selected for the fulfilment of the agreement;

7° That the tender should be made by a public officer who has the capacity required for such sorts of writs. Civ. C. 102 et seq., 111, 1134, 1168 et seq., 1181, 1186 et seq., 1220 et seq., 1235 et seq., 1243, 1247, 1264, 1606 et seq., 1609.

Art. 1259. It is not necessary in order to make the deposit valid that it should have been authorized by a Judge; it is sufficient :

1° That it should have been preceded by a writ served upon the creditor containing an indication of the day, hour, and place where the thing offered is to be deposited;

2° That the debtor should have parted with the thing tendered by leaving it at the place fixed by law to receive deposits, together with interest up to the date of deposit;

3° That an official report should be drawn up by a public officer, of the nature of the things tendered,

of the refusal made by the creditor to receive them, or of his non-appearance, and finally of the deposit;

4° That in case of non-appearance on the part of the creditor, the official report of deposit should be served upon him with a writ demanding that he should take the thing deposited.

Art. 1260. The expense of an actual tender and of a deposit shall be borne by the creditor, if the same is valid. Civ. C. 1248.

Art. 1261. So long as the deposit has not been accepted by the creditor, the debtor may withdraw it; and if he withdraws it, his co-debtors or his sureties are not released. Civ. C. 1121, 1200, 1211 et seq., 1262 et seq., 2011, 2034 et seq.

Art. 1262. When a debtor has himself obtained a judgment which has become final and which declares that his tender and deposit are good and valid, he cannot any longer, even with the consent of the creditor, withdraw his deposit to the detriment of his co-debtors or his sureties. Civ. C. 1200 et seq., 1351, 2034, 2036.

Art. 1263. A creditor who has allowed the debtor to withdraw his deposit after it has been declared valid by a judgment which has become final, can no longer enforce payment of his claim by means of the preferences or mortgages attached thereto: he is only entitled to a mortgage from the time when the deed by which he has consented to the withdrawal of the deposit has been clothed with the necessary requirements to establish a mortgage. Civ. C. 1271 et seq., 1278, 1351, 2127 et seq., 2134.

Art. 1264. If the thing due is a special corpus which must be delivered at the place where it is, the

debtor must have a writ of demand issued against the creditor to take away the thing which shall be served upon him personally, or at his residence or at the residence elected for the fulfilment of the agreement. When the writ has been issued, if the creditor does not take the thing away and the debtor requires the place where it is, he can obtain leave from the Court to deposit it in some other place. Civ. C. 111, 1247, 1258, 1609, 1961 et seq.

§ 5. *Of Assignment of Property.*

Art. 1265. An assignment of property is the abandonment made by a debtor of all his property in favor of his creditors when he finds himself unable to pay his debts. Civ. C. 631, 634, 1166, 1266 et seq., 1945.

Art. 1266. An assignment of property is voluntary or judicial.

Art. 1267. A voluntary assignment of property is one which creditors accept voluntarily and which has no other effect than what results from the special conditions of the contract entered into between them and the debtor. Civ. C. 1134 et seq.

Art. 1268. A judicial assignment is an advantage which the law grants to a debtor who has been unfortunate and has acted in good faith by being allowed to make a judicial abandonment of all his property in favor of his creditors, notwithstanding any agreement to the contrary, for the purpose of securing the liberty of his person (1). Civ. C. 6, 1133, 1945, 2059 et seq., 2268.

(1). The law of 22nd July 1867 abolished execution against the person in civil and commercial matters and against foreigners.

Art. 1269. A judicial assignment does not confer ownership upon the creditors: it only gives them the right to have the property sold for their benefit and to be entitled to the income up to the time of the sale. Civ. C. 2092 et seq.

Art. 1270. Creditors cannot refuse a judicial assignment outside of the cases excepted by law.

The assignment carries with it the release from personal restraint.

Otherwise, it only releases the debtor to the extent of the value of the property abandoned; and in case such property is insufficient and if he acquires other property he is obliged to abandon it until he has paid in full. Civ. C. 1945, 2059

Section II.

Of Novation.

Art. 1271. Novation takes place in three ways:

1° When the debtor contracts towards his creditor a new debt which is substituted for the old one and extinguishes it;

2° When a new debtor is substituted for the old one, who is released by the creditor;

3° When, owing to a new agreement, a new creditor is substituted for the old one, with respect to whom the debtor is released. Civ. C. 879, 1250, 1263, 1272 et seq., 1278 et seq., 1281, 1372 et seq., 1689 et seq.

Art. 1272. Novation can only take place between persons who have the capacity of contracting. Civ. C. 1123 et seq.

Art. 1273. Novation cannot be presumed: the

wish to effect it must clearly result from the instrument. Civ. C. 1134, 1277.

Art. 1274. Novation, by substitution of a new debtor, can take place without the co-operation of the first debtor. Civ. C. 1121, 1236, 1279 et seq.

Art. 1275. A substitution by which a debtor gives to a creditor another debtor, who binds himself towards the creditor, does not occasion a novation, unless the creditor has expressly declared that he intended to release his debtor who has made the substitution. Civ. C. 1250, 1690, 2112, 2212.

Art. 1276. A creditor who has released a debtor by whom the substitution has been made has no remedy against such debtor if the substitute becomes insolvent, unless the instrument contains an express reserve, or unless the substitute was already openly in a state of bankruptcy or insolvency at the time of the substitution. Civ. C. 1446, 1613, 1693 et seq., 1865, 2003, 2032.

Art. 1277. A simple indication made by the debtor of a person who is to pay in his stead does not occasion a novation.

The same rule applies in case of a simple indication made by the creditor of a person who is to receive in his stead. Civ. C. 1236, 1250, 1689 et seq., 2112.

Art. 1278. Preferences and mortgages resulting from an old claim do not extend to the new one which is substituted to it, unless the creditor has expressly reserved them. Civ. C. 1134, 1279, 1299, 2095, 2114.

Art. 1279. When novation takes place by the

substitution of a new debtor, the original preferences and mortgages attached to the claim do not apply to the property of the new debtor. Civ. C. 1278, 1280 et seq., 2095, 2114.

Art. 1280. When novation takes place between the creditor and one of the joint debtors, the preferences and mortgages of the former claim can only be reserved as to the property of the person who contracts the new debt. Civ. C. 1200, 1208 et seq., 1278 et seq.

Art. 1281. The co-debtors are released by a novation which has taken place between the creditor and one of the joint debtors.

Novation which takes place with respect to the principal debtor releases the sureties.

Nevertheless, if the creditor, in the first case, has insisted upon the approval of the co-debtors or in the second case upon the approval of the sureties, the former claim subsists, if the co-debtors or the sureties refuse to accept the new arrangement. Civ. C. 1200 et seq., 1280, 1284, 2034, 2037.

Section III.

Of Release of Debt.

Art. 1282. A voluntary surrender of an original instrument under private signature by a creditor to a debtor is proof of release. Civ. C. 1134, 1138, 1317 et seq., 1322 et seq., 1350, 1352.

Art. 1283. A voluntary surrender of an exemplified copy of the evidence of debt in form for execution establishes a presumption of release of the debt

or of payment, without prejudice to proof of the contrary. Civ. C. 1282, 1315, 1334, 1350, 1352.

Art. 1284. A surrender of an original instrument under private signature or of a certified copy of an instrument in executory form to one of the joint debtors has the same effect for the benefit of his co-debtors. Civ. C. 1208, 1282 et seq.

Art. 1285. A conventional release or discharge in favor of one of the joint debtors releases all the others, unless the creditor has expressly reserved his rights against the latter.

In this last case, he can only recover the debt after deducting the share of the person to whom he has given the release. Civ. C. 1208, 1210, 1215, 1294, 1301, 1365.

Art. 1286. The delivery of a thing given as pledge is not sufficient to establish a presumption of release of debt. Civ. C. 2071 et seq., 2076.

Art. 1287. A conventional release or discharge granted to the principal debtor releases the sureties;

When granted to a surety it does not release the principal debtor;

When granted to one of the sureties it does not release the others. Civ. C. 1288, 1294, 1365, 2025, 2033, 2083.

Art. 1288. What a creditor has received from a surety to release his undertaking shall be credited to the debt and shall contribute to the release of the principal debtor and the other sureties. Civ. C. 1236, 1287.

Section IV.

Of Compensation.

Art. 1289. When two persons are indebted to each other, compensation takes place between them which wipes out both debts in the manner and in the cases hereafter mentioned. Civ. C. 1023, 1290 et seq., 1623, 1765, 1769, 1850, 1885, 2089.

Art. 1290. Compensation takes place as a matter of right by the sole operation of the law, even without the knowledge of the debtors: the two debts are reciprocally wiped out from the moment they happen to exist at the same time, to the extent of the respective amounts thereof. Civ. C. 1220.

Art. 1291. Compensation only takes place between two debts of which the object is likewise a sum of money or a certain quantity of fungibles of the same kind of which the quantity is fixed and which are both due, and can be claimed.

Prestations in grain or products about which there is no dispute and of which the price is regulated by official market lists can be compensated with sums which are liquidated and due. Civ. C. 587.

Art. 1292. Days of grace are not an obstacle to compensation. Civ. C. 1244, 1900, 2212.

Art. 1293. Compensation takes place whatever may be the origin of either debt, except in case:

1° Of an action for restitution of a thing of which the owner has been unjustly deprived;

2° Of an action for restitution of a deposit or a loan for use;

3° Of a debt due for nourishment, and declared not liable to seizure. Civ. C. 1874 et seq., 1885, 1915 et seq., 1932, 2233.

Art. 1294. A surety can oppose compensation for what the creditor owes the principal debtor;

But a principal debtor cannot oppose compensation for what the creditor owes the surety.

In like manner a debtor jointly and severally liable cannot oppose compensation for what a creditor owes his co-debtor. Civ. C. 1200 et seq., 1208, 1285, 1287, 1301, 2021, 2036.

Art. 1295. A debtor who has accepted out and out the assignment of his rights made by a creditor to a third party, can no longer set up against the assignee the compensation which he might before the acceptance have set up against the assignor.

As regards an assignment which has not been accepted by the debtor, but notice of which has been served upon him, it only prevents compensation as to claims subsequent to such notice. Civ. C. 1275 et seq., 1289, 1689 et seq.

Art. 1296. When the two debts are not payable at the same place, compensation can only be set up by making good the cost of delivery. Civ. C. 1247 et seq.

Art. 1297. When several debts which can be compensated are due by the same person, the same rules are followed for compensation as those laid down in article 1256 for imputation.

Art. 1298. Compensation does not take place when prejudicial to rights acquired by a third party. For instance, a person who, being a debtor, has become a creditor since a seizure has been made in his hands by a third party, cannot set up compensation to the prejudice of the attaching creditor. Civ. C. 1242.

Art. 1299. A person who has paid a debt which by right was wiped out by compensation, cannot any longer, by bringing up the claim for which he has not set up compensation, take advantage of the preferences or mortgages depending therefrom to the detriment of third parties, unless he had good reason for not having any knowledge of the claim which would have compensated his debt. Civ. C. 1271, 1278, 1290, 2095 et seq., 2114 et seq., 2180-1°.

Section V.

Of Merger.

Art. 1300. When the capacities of creditor and debtor are joined in the same person, merger takes place as a matter of right and wipes out both claims. Civ. C. 617, 625, 705, 1209, 1301, 1946, 2035.

Art. 1301. Merger which takes place in the person of the principal debtor benefits his sureties;

When it takes place in the person of the surety, it does not extinguish the principal obligation;

When it takes place in the person of the creditor, it only benefits his co-debtors jointly and severally liable to the extent of the portion which he owed. Civ. C. 802, 878, 1200, 1208 et seq., 1220, 1285, 1287, 1294, 2035 et seq.

Section VI.

Of the Loss of a Thing Due.

Art. 1302. When a definite and specific thing forming the subject matter of an obligation is destroyed or can no longer be used in trade (1) or is lost,

(1) The word trade is used here in a broad sense and applies to all things which can be disposed of.

in such a way that its existence is absolutely unknown, the obligation ceases if the thing has been destroyed or lost not owing to the fault of the debtor and before a demand had been made upon him.

Even when a demand has been made upon the debtor, the obligation ceases if he has not assumed the risks of accidents, provided the thing would likewise have been destroyed in the possession of the creditor if it had been delivered to him.

The debtor is obliged to make proof of the accident which he alleges.

In whatever manner a thing which has been stolen may have been destroyed or lost, its loss does not exonerate the person who has taken it from returning its value. Civ. C. 617, 623 et seq., 703, 855, 1042, 1136 et seq., 1148 et seq., 1193 et seq., 1245, 1303, 1382 et seq., 1601, 1733, 1741, 1788, 1808, 1810, 1882, 2279 et seq.

Art. 1303. When a thing has been destroyed, or can no longer be used in trade (1), or has been lost, not owing to the fault of the debtor, he is obliged, if entitled to any rights or causes of action for indemnity with respect to such thing, to assign them to his creditor. Civ. C. 1302, 1382, 1934.

Section VII.

Of the Action for Avoidance or Rescission.

Art. 1304. In all cases in which an action for avoidance or rescission of a contract is not limited to a shorter time by a special law, such action is maintainable during ten years.

(1) The word trade is used here in a broad sense and applies to all things which can be disposed of.

In case of duress, the time only runs from the day upon which such duress has ceased; in case of error or fraud; from the day upon which the same has been discovered; and for instruments executed by married women, not authorized, from the day of the dissolution of the marriage.

As regards contracts entered into by interdicted persons, the time only runs from the day the interdiction is removed; and as regards those entered into by minors, from the day they come of age. Civ. C. 181, 183, 185, 388 et seq., 488 et seq., 499, 512 et seq., 1108 et seq., 1124 et seq., 1305 et seq., 1338 et seq., 1663, 1676, 2219 et seq., 2265 et seq., 2271 et seq.

Art. 1305. A simple inadequacy causes rescission in favor of a minor not emancipated with respect to all sorts of contracts; and in favor of an emancipated minor with respect to all contracts which exceed the limits of his capacity, as is specified in the title *Of Minority, Guardianship and Emancipation.* Civ. C. 450, 457 et seq., 481 et seq., 487, 783, 840, 942, 1074, 1118, 1125, 1306 et seq., 1674 et seq., 1684.

Art. 1306. A minor is not entitled to claim rescission on the ground of inadequacy, when it only results from a casual and unforeseen event. Civ. C. 1148, 1169.

Art. 1307. A simple declaration made by the minor that he has come of age does not prevent him from being entitled to rescission. Civ. C. 488, 1310.

Art. 1308. A minor who is a trader, a banker or a workman is not entitled to rescission in connection with the engagements which he has taken relating to his trade or his work. Civ. C. 487.

Art. 1309. A minor is not entitled to have the conditions inserted in his marriage contract rescinded, when they have been made with the consent and assistance of those whose consent was necessary for the validity of his marriage. Civ. C. 148 et seq., 160, 1095, 1398.

Art. 1310. He is not entitled to have the obligations resulting from his tort or quasi-tort rescinded. Civ. C. 1382 et seq.

Art. 1311. He is not allowed to repudiate an agreement which he had entered into during his minority, when he has ratified it after coming of age, whether such agreement is void in its form or whether it is only voidable. Civ. C. 1338.

Art. 1312. When minors, interdicted persons, or married women are allowed in such capacities to be relieved of their agreements, the repayment of what may have been paid in consequence of such agreements during the minority, the interdiction, or the marriage, cannot be claimed, unless it is proved that what has been paid has turned to their advantage. Civ. C. 1241, 1315 et seq., 1926, 1990.

Art. 1313. Persons of full age are only entitled to rescission on account of injury under the conditions specifically set forth in the present Code. Civ. C. 783, 887, 1079, 1674.

Art. 1314. When the formalities required with regard to minors or interdicted persons, either for the conveyance of real estate, or for the division of a succession, have been fulfilled, such acts are considered as if they had been made when the person had come of age or before his interdiction. Civ. C.

450 et seq., 481 et seq., 509 et seq., 817 et seq., 840, 1095, 1309, 1398, 2052.

Chapter VI.

Of the Proof of Obligations and of Payment.

Art. 1315. A person who claims the fulfilment of an obligation must prove it.

Reciprocally, a person who claims that he is released, must prove payment or the fact which has caused the obligation to be wiped out. Civ. C. 1101, 1134, 1234, 1282 et seq., 1316 et seq., 1350 et seq., 1908.

Art. 1316. The rules relating to documentary evidence, oral evidence, presumptions, admissions of parties, and oaths, are explained in the following sections. Civ. C. 45 et seq., 1282 et seq., 1317 et seq., 1341 et seq., 1349 et seq., 1354 et seq., 1357 et seq.

Section I.

Of Documentary Evidence.

§ 1. *Of Instruments in Public Form.*

Art. 1317. An instrument in public form is one which has been made by public officers having the right to draw up instruments in the place where the instrument has been prepared and with the requisite formalities. Civ. C. 1318 et seq.

Art. 1318. An instrument which is not authentic owing to the incompetency or incapacity of the officer, or a defect in its form is valid as a private

instrument, if it has been signed by the parties. Civ. C. 1322 et seq., 1325 et seq.

Art. 1319. An instrument in public form is absolute proof of the agreement which it contains between the contracting parties and their heirs or legal representatives.

Nevertheless, in case of a criminal complaint for forgery, the execution of the instrument alleged to have been forged shall be suspended by the indictment, and in case of a complaint for forgery made incidentally, the Courts may, according to the circumstances, suspend the execution of the instrument temporarily. Civ. C. 724, 1122, 1134, 1165, 1282 et seq., 1320 et seq.

Art. 1320. An instrument, whether in public form or under private signature, constitutes proof between the parties, even of what is only expressed therein in explanatory terms, provided the declaration directly applies to the operative part. The declarations which do not relate to the operative part can only be used as a commencement of proof. Civ. C. 1317, 1322, 1341, 1347.

Art. 1321. Defeasances are only binding between the contracting parties: they produce no effect against third parties. Civ. C. 1165, 1394 et seq.

§ 2. *Of Instruments under Private Signature.*

Art. 1322. An instrument under private signature admitted to be his by the person against whom it is set up, or which is legally held as such, has, with respect to those who have signed it, their heirs and legal representatives the same force as an

instrument in public form Civ. C. 1122, 1134, 1282 et seq., 1317 et seq., 1341, 1582, 2123.

Art. 1323. A person against whom an instrument under private signature is set up is obliged to formally admit or repudiate his handwriting or his signature.

His heirs or legal representatives may confine themselves to declare that they do not know the handwriting or the signature of their principal. Civ. C. 724, 1122, 1324.

Art. 1324. In case the party repudiates his handwriting or signature, and in case his heirs or legal representatives declare that they do not know it, a verification shall be ordered by the Court.

Art. 1325. Instruments under private signature which contain synallagmatic agreements are only valid if they are made in as many originals as there are parties having a distinct interest.

One original is sufficient for all the persons who have the same interest.

Each original must indicate the number of originals which have been made.

Nevertheless, the omission to mention that the originals have been made in duplicate, triplicate, etc., cannot be set up by the person who has performed his part of the agreement contained in the instrument. Civ. C. 1102, 1184, 1318, 1320, 1338, 1347.

Art. 1326. A note or a promise under private signature by which a single party binds himself towards another to pay a sum of money or to give a special thing, must be wholly written in the hand of the person who has signed it; or at least, it is necessary

that, in addition to his signature, he should have written in his own hand *Good for,* or *Approved,* with the sum or the quantity of the thing written out in full.

Except in case the instrument emanates from traders, workmen, farm laborers, vine-dressers, laborers hired by the day, and servants. Civ. C. 1103, 1327, 1347.

Art. 1327. When the sum expressed in the body of the instrument is different from the one mentioned after the "*Good for*", the obligation is only presumed to be for the smaller amount, even if the instrument and the "*Good for*", are written entirely in the hand of the person who has bound himself, unless it is proved where the error lies. Civ. C. 1103, 1162, 1326, 1341, 1350, 1352.

Art. 1328. Instruments under private signature only bear a date with respect to third parties from the day upon which they have been registered, from the day of the death of the person, or of one of the persons who have signed them, or from the day their contents are embodied in instruments drawn up by public officers, such as official reports of the affixing of seals, or of the making of inventories. Civ. C. 1322, 1410, 1743, 1750, 2102-1°.

Art. 1329. The books of merchants shall not be taken as evidence against persons who are not traders of the goods therein set forth, with the exception of what is stated with respect to oaths. Civ. C. 1330, 1357 et seq., 2275.

Art. 1330. The books of merchants shall be held as proof against themselves, but the person who wishes to avail himself of them cannot subdivide

them as to what may be contrary to his claim. Civ. C. 1329, 1356.

Art. 1331. Diaries and private papers do not establish a right in favor of those who have written them. They are evidence against them; 1° In all cases in which they formally show a payment received; 2° When they contain the express statement that the entry has been made to take the place of an instrument for the benefit of the person in whose favor they show an obligation. Civ. C. 46, 324, 1235, 1348, 1354, 1415.

Art. 1332. A writing added by a creditor at the end, in the margin, or upon the back of a deed which has always remained in his possession constitutes a proof, although he has not signed or dated the same, whenever such writing tends to show that the debtor is released.

The same rule applies to what has been written by the creditor on the back, or in the margin, or at the end of the duplicate of an instrument or of a receipt, provided such duplicate is in the hands of the debtor. Civ. C. 1282, 1284, 1350, 1352, 1354 et seq.

§ 3. *Of Tallies.*

Art. 1333. Tallies corresponding to deliveries are proof among people who are in the habit of thus keeping an account of the articles which they furnish or receive in retail. Civ. C. 1350 et seq.

§ 4. *Of Copies of Title Deeds.*

Art. 1334. Copies, when an original title deed exists, are only evidence of what is contained in the deed, and its production can always be demanded. Civ. C. 45, 1317, 1322.

Art. 1335. When the original title deed no longer exists, copies are evidence according to the following provisions.

1° Executory copies or first certified copies are entitled to the same faith as the original: copies which have been made by order of a Judge, in the presence of the parties, or they having been duly summoned, or those which have been made in the presence of the parties and by their mutual consent, are also entitled to the same faith.

2° Copies which have been made from the original title deed by the notary who has received it, or by one of his successors, or by public officers who, in such capacity, are the keepers of the originals, but without an order of the Judge or the consent of the parties, and since the executory copies or first certified copies have been delivered, may, in case of loss of the original, be entitled to the same faith when they are ancient.

They are considered as ancient when they date back more than thirty years.

If they date back less than thirty years they can only be used as the commencement of written proof.

3° When the copies taken from the original title deed deposited with a notary have not been made by the notary who received the deed or by one of his successors or by public officials who in such capacity are the keepers of the originals, such copies can only be used, however old they may be, as the commencement of written proof.

4° Copies of copies may, according to circumstances, be considered as mere information. Civ. C. 1347.

Art. 1336. The recording of a title deed in the public registers can only be used as the commence-

ment of written proof, and for that purpose it shall even be necessary:

1° That it be certain that all the originals filed with the notary during the year in which the title deed appears to have been made are lost, or that it be proved that the original of such deed has been lost owing to a special accident.

2° That a docket of the notary in proper order should exist showing that the title deed was made upon that date.

When, owing to the concurrence of these two circumstances, proof can be made by witnesses, it shall be necessary that those who were the witnesses to the title deed be heard, if they are still alive. Civ. C. 939 et seq., 1069 et seq., 1335-4°, 1341, 1347, 2108, 2181.

§ 5. *Of Instruments acknowledging or confirming a Thing.*

Art. 1337. Instruments admitting a thing do not make it unnecessary to produce the original instrument, unless its terms are expressly recited therein.

What they may contain in addition to the previous instrument or what differs therefrom is not taken into account.

Nevertheless, if there are several identical acknowledgments, supported by possession, and of which one dates more than thirty years back, the creditor may be relieved from producing the original instrument. Civ. C. 695, 1334, 1338 et seq., 2228, 2263.

Art. 1338. An instrument confirming or ratifying an obligation against which the law allows an action for avoidance or rescission is only valid when the substance of the obligation is recited therein and the

ground of the action for rescission and the intention to make good the defect upon which such action is based are mentioned.

In the absence of an instrument of confirmation or ratification, it is sufficient that the obligation should be voluntarily performed after the time when it could be lawfully confirmed or ratified.

Confirmation, ratification or voluntary performance in the form and at the time prescribed by law implies that the means of defence and exceptions which could be set up against the instrument are abandoned without prejudice, however, to the rights of third parties. Civ. C. 1115 et seq., 1120, 1311, 1998, 2054, 2225.

Art. 1339. A donor cannot by any act of confirmation make good the flaws of a donation inter vivos which is void owing to its form; it must be remade in legal form. Civ. C. 931 et seq., 943 et seq., 960, 964, 1081, 1092, 1340.

Art. 1340. Confirmation or ratification, or voluntary performance of a donation by the heirs or legal representatives of a donor after his death implies that they renounce the right to set up either irregularities of form or any other objection. Civ. C. 724, 964, 966, 1122.

Section II.

Of Oral Evidence.

Art. 1341. (Law of April 1, 1928). It is necessary to execute an instrument drawn up in the presence of notaries or made under private signature in all matters when a sum or value exceeding five hundred francs is involved, even for voluntary deposits; and

no proof by witnesses against or beyond the contents of an instrument, nor as to what is alleged to have been said previously, at the time of or since it was drawn up shall be allowed, even if the sum or value in dispute is less than five hundred francs :

All of which is without prejudice to what is specified in the laws relating to commerce. Civ. C. 46, 1315 et seq., 1319, 1322, 1342 et seq., 1582, 1715, 1834, 1923 et seq., 1950, 1985, 2044, 2074.

Art. 1342. (Law of April 1, 1928). The above rule applies in case the action is brought not only for the payment of a capital, but also for the payment of interest, which, added to the capital exceeds the sum of five hundred francs. Civ. C. 1905, 1907.

Art. 1343. (Law of April 1, 1928). A person who has brought an action for more than five hundred francs is not allowed to produce oral evidence, even by reducing his original claim.

Art. 1344. (Law of April 1, 1928). Oral testimony cannot be allowed in an action for a sum even less than five hundred francs, when such sum is declared to be the balance or to form part of a larger claim which is not substantiated by a writing.

Art. 1345. (Law of April 1, 1928). If, in the same action, a party asks for several things, for which he holds no written instrument, and which, added together exceed the sum of five hundred francs, no oral testimony can be allowed, even if the party alleges that the claims emanate from different sources and have arisen at different times, unless such rights are derived from a succession, donation, or otherwise, from different persons. Civ. C. 1346.

Art. 1346. All actions whatever, which are not entirely substantiated by writings, shall be brought by the same writ; after which the other actions which are not substantiated by written proofs shall not be maintainable. Civ. C. 1345.

Art. 1347. The above rules are subject to exceptions, when there is a commencement of written proof.

Is so called any written instrument which emanates from the person against whom the action is brought, or from the person he represents, and which tends to make the alleged fact probable. Civ. C. 323 et seq., 341, 1320, 1335 et seq., 1360.

Art. 1348. Such rules are also subject to exceptions whenever it has not been possible for the creditor to procure written proof of the obligation which has been contracted towards him.

This second exception applies :

1° To obligations arising from quasi-contracts, and torts or quasi-torts ;

2° To deposits necessarily made in case of fire, destruction, disturbance or wreck, and to those made by travellers when stopping in an hotel; always taking into account the standing of the persons and the circumstances of fact ;

3° To obligations contracted in case of unforeseen accidents, when instruments in writing could not have been made ;

4° In case the creditor has lost the instrument which served as written proof in consequence of an unforeseen accident resulting from superior force. Civ. C. 46, 1116, 1148, 1371 et seq., 1282 et seq., 1782, 1949 et seq.

Section III.

Of Presumptions.

Art. 1349. Presumptions are consequences which the law or the Judge draws from a known fact to an unknown fact. Civ. C. 1315 et seq., 1350 et seq.

§ 1. *Of Presumptions established by Law.*

Art. 1350. A legal presumption is one which a special law attaches to certain acts or certain facts; such as :

1° Acts which the law declares to be void as presumed to have taken place in violation of legal provisions owing to their very nature;

2° Cases in which the law declares that ownership or exoneration results from certain definite circumstances;

3° The faith which the law gives to res adjudicata;

4° The effect which the law attaches to an admission of the party or to his oath. Civ. C. 1, 22C, 312, 340, 525, 553, 567, 569, 571, 653 et seq., 666 et seq., 720 et seq., 785, 811, 883, 911, 1064, 1082, 1282 et seq., 1327, 1351, 1354 et seq., 1402, 1434 et seq., 1731 et seq.

Art. 1351. The faith due to res adjudicata only extends to what forms part of the judgment. The thing sued for must be the same; the action must be based on the same cause; the action must be between the same parties and brought by the same parties against the same parties in the same capacity. Civ. C. 800, 877, 1119 et seq., 1165 et seq., 1197 et seq., 1205 et seq., 1222 et seq., 1365, 2051, 2056, 2157, 2215, 2249 et seq.

Art. 1352. Legal presumption dispenses with the necessity of any proof on the part of the person in whose favor it exists.

No proof is allowed against a presumption of law, when, upon the basis of such presumption, the law annuls certain acts or defeats the cause of action, unless the right to prove the contrary is reserved by law and subject to what shall be laid down with respect to oaths and judicial admissions. Civ. C. 312 et seq., 911, 1099 et seq., 1282, 1350 et seq., 2262.

§ 2. *Of Presumptions which are not Established by Law.*

Art. 1353. Presumptions which are not established by law are left to the learning and discretion of the Judge, who shall only admit presumptions which are serious, precise and corroborative, and only in cases in which the law admits oral proofs, unless the instrument is attacked on account of fraud or deceit. Civ. C. 1019, 1023, 1109, 1116 et seq., 1202, 1273, 1341 et seq., 1348, 2015.

Section IV.

Of Admissions of the Party.

Art. 1354. An admission which is set up against a party is either extra-judicial or judicial. Civ. C. 1355 et seq.

Art. 1355. The allegation of an extra-judicial admission which is purely verbal is useless whenever the action is one in which oral evidence would not be allowed. Civ. C. 1341 et seq., 1347.

Art. 1356. A judicial admission is a declaration

made in Court by the party or his special attorney-in-fact.

Full faith is due to it against the person who has made it.

It cannot be divided against such person.

It cannot be recalled, unless it is proved that it results from an error of fact. It could not be recalled on the ground of an error of law. Civ. C. 1109 et seq., 1330 et seq., 2052 et seq.

Section V.

Of Oaths.

Art. 1357. A judicial oath is of two kinds :

1° The one which a party defers to the other to make the judgment in the case depend upon it. It is called *decisive* oath;

2° The one which is administered by the Judge of his own accord to either party. Civ. C. 1315 et seq., 1358 et seq., 1366.

§ 1. *Of Decisive Oaths.*

Art. 1358. A decisive oath can be deferred in all kinds of controversies whatsoever. Civ. C. 1715, 1924, 2275.

Art. 1359. It can only be deferred with reference to a fact which is personal to the party to whom it is deferred. Civ. C. 1362.

Art. 1360. It can be deferred at all stages of the case, and even if there is no commencement of proof of the claim or of the exception in connection with which it is sought. Civ. C. 1347, 1364.

Art. 1361. A person to whom an oath is deferred

and who refuses to take it, or who does not consent to have it taken by his opponent, or an opponent to whom it has been left to take the oath and who refuses to take it, shall be defeated in his claim or in his exception. Civ. C. 1368.

Art. 1362. An oath cannot be deferred back when the fact to which it relates does not concern both parties, but is purely personal to the one to which the oath had been deferred. Civ. C. 1359.

Art. 1363. When an oath deferred or deferred back has been taken, the opponent is not allowed to prove that it is false. Civ. C. 1350, 1352.

Art. 1364. A party to whom the oath is deferred or who defers it back, can no longer retract when his opponent declares that he is ready to take the oath. Civ. C. 1121, 1134.

Art. 1365. The oath when taken only constitutes a proof for the benefit of the person who has deferred it, or against him, and for the benefit of his heirs or legal representatives or against them.

Nevertheless, the oath deferred to the debtor by one of the creditors towards whom he is jointly and severally liable, only releases the former as to the portion of such creditor.

The oath deferred to the principal debtor also releases the sureties.

The oath deferred to one of the debtors jointly and severally liable releases the co-debtors.

And the oath deferred to the sureties releases the principal debtor.

In the two last cases the oath of the co-debtor jointly and severally liable, or of the sureties, only releases the other co-debtors or the principal debtor

when it has been deferred in connection with the debt, and not with reference to the fact of the joint and several liability or of the security. Civ. C. 724, 1122, 1165, 1197 et seq., 1200, 1208 et seq., 1284 et seq., 1294, 1301, 2025, 2034 et seq.

§ 2. *Of Oaths administered by the Court of its own accord.*

Art. 1366. A Judge may administer an oath to one of the parties, either to make the decision of the case depend upon it, or only to fix the amount of the judgment. Civ. C. 1329, 1367 et seq., 1716, 1781, 1924.

Art. 1367. A Judge can only administer an oath of his own accord, either with reference to the claim or the exception raised, under the two following conditions: it is necessary :

1° That the cause of action or the exception should not be fully substantiated;

2° That it should not be wholly unsupported by proof.

Outside of these two cases, the Judge must either admit or dismiss the claim absolutely.

Art. 1368. An oath deferred by a Judge to one of the parties of his own accord cannot be left by such party to be taken by the other. Civ. C. 1361 et seq.

Art. 1369. An oath as to the value of a thing claimed can only be administered to the plaintiff by the Judge when it is impossible to establish its value in a different way.

The Judge must even in such case fix the amount to the extent of which the plaintiff shall be believed on his oath. Civ. C. 1366.

TITLE FOURTH.

Of Agreements which are formed without Contract.

(Passed February 9, 1804; promulgated 19th of same month.)

Art. 1370. Certain agreements are formed without any contract being made, either on the part of the party who binds himself or on the part of the one towards whom such party is bound.

Some of them result from the operation of the law alone; others arise in connection with a fact which is personal to the party who is bound.

The former ones are the agreements entered into involuntarily such as those between neighboring landowners or those of guardians or other administrators who cannot decline the duties imposed upon them.

Agreements arising in connection with a fact which is personal to the party who is bound result either from quasi-contracts or from torts or quasi-torts; they form the subject-matter of the present title. Civ. C. 203 et seq., 211, 371, 419, 450, 639 et seq., 650 et seq., 1101, 1108, 1371 et seq., 1382 et seq.

Chapter I.

Of Quasi-Contracts.

Art. 1371. Quasi-contracts are purely voluntary acts of an individual from which a certain agreement results in favor of a third party, and sometimes a reciprocal agreement between two parties. Civ. C. 1372 et seq., 1376 et seq.

Art. 1372. When a person voluntarily manages another's business, whether the owner knows of such management or whether he does not, the person who manages such business contracts the tacit agreement to continue the management which he has undertaken and to go on with it until the owner is in a position to look after the business himself: he must also take charge of all subsidiary matters connected therewith.

He is subject to all the obligations which would result from an express power which the owner might have given him. Civ. C. 1137, 1373 et seq., 1984 et seq., 1991 et seq., 2007.

Art. 1373. He is obliged, even if the owner dies before the matter is closed, to continue his management up to the time the heir has been able to assume it. Civ. C. 1991, 2010.

Art. 1374. He is obliged to use in the management of the business all the care of a prudent owner.

Nevertheless, the circumstances which have led him to take charge of the matter may authorize the Judge to reduce the damages which may result from the laches or negligence of the manager. Civ. C 1137, 1146 et seq., 1149, 1382, 1991 et seq.

Art. 1375. The owner whose business has been properly managed must carry out the agreements which the manager has made in his name; he must hold him harmless for all the personal agreements which he has made and repay him all the useful and necessary expenses which he has incurred. Civ. C. 861 et seq., 1153, 1381, 1998 et seq., 2175.

Art. 1376. A person who receives by mistake or knowingly what is not due to him is obliged to return

it to the individual from whom he has unduly received it. Civ. C. 1109 et seq., 1131, 1235 et seq., 1304, 1377, 1381, 1906.

Art. 1377. When a person who by mistake believed that he owed a debt pays it, he has the right to recover it from the creditor.

Nevertheless, this right ceases in case the creditor has destroyed his documentary title in consequence of the payment, subject to the remedy of the person who has paid against the real debtor. Civ. C. 1235 et seq., 1376, 1906, 1967.

Art. 1378. If there has been bad faith on the part of the person who has received payment, he is obliged to return the capital, together with interest or the revenue, from the day of payment. Civ. C. 549 et seq., 583 et seq., 801, 1116, 1153, 1379, 1381, 1635, 1907, 2262, 2268.

Art. 1379. If the thing unduly received is real estate or corporeal personal property, the person who has received it is obliged to return it in kind, if it exists, or its value if it has been destroyed or deteriorated by him; he is also answerable for its loss by accident if he has received it in bad faith. Civ. C. 1116, 1148, 1302, 1382.

Art. 1380. If the person who has received the thing in good faith has sold it, he is only obliged to return the price of the sale. Civ. C. 1138, 1238, 1240, 1935, 2268.

Art. 1381. The person to whom the thing is returned must compensate the possessor even in bad faith, for all the necessary or useful expenses which have been incurred for its preservation. Civ. C. 1375, 1886, 1890, 2102-3°.

Chapter II.

Of Torts and Quasi-Torts.

Art. 1382. Every act whatever of an individual which causes injury to another obliges the one owing to whom it has occurred to make up for it. Civ. C. 1310, 1348-1°, 1424 et seq.

Art. 1383. Every one is responsible for the injury which he has caused not only owing to his own act, but owing to his negligence or his imprudence. Civ. C. 1382, 1792, 2270.

Art. 1384. A person is responsible not only for the damage which he causes owing to his own act, but also for that which is caused by the acts of persons for whom he is answerable or by things which are in his custody.

(Law of November 7, 1922). Nevertheless a person in possession in any capacity of all or part of a piece of real estate or of personal property is only responsible towards third parties, in case of fire, for the damage occasioned if it is established that the fire was caused by his negligence or the negligence of persons for whom he is responsible.

This provision does not apply to the relations between landlords and tenants which are governed, as in the past, by articles 1733 and 1734 of the Civil Code.

The father and the mother, after the death of the husband, are responsible for the damage caused by their minor children living with them.

Masters and employers are responsible for the damage caused by their pupils or apprentices connection with the duties attached to their employment.

Schoolmasters and mechanics are responsible for the damage caused by their pupils or apprentices during the time they are under their supervision.

The above liability exists unless the father, mother, schoolmasters or mechanics prove that they have not been able to prevent the act which gives rise to such liability.

(Law of July 20, 1899). Nevertheless the civil responsibility of the State is substituted for that of the teachers of public instruction. Civ. C. 372, 1797, 1953 et seq.

Art. 1385. The owner of an animal, or the person who uses it while such use lasts, is liable for the damage which the animal has caused, whether it was under his care or whether it was lost or had escaped. Civ. C. 1383.

Art. 1386. The owner of a building is responsible for the damage caused by its destruction when it has taken place because he has not kept it in good condition or owing to bad construction. Civ. C. 1773.

TITLE FIFTH.

Of Marriage Contracts and of the Respective Rights of Husband and Wife.

(Passed February 10, 1804; promulgated 20th of same month.)

Chapter I.

General Provisions.

Art. 1387. The law only regulates conjugal relations with respect to property when no special agreement has been made, and the husband and wife may enter into any agreement they deem proper,

provided it is not contrary to good morals, subject however to the following restrictions. Civ. C. 6, 900, 947, 1081 et seq., 1091 et seq., 1133, 1172, 1388 et seq., 1497 et seq., 1527, 1837, 2140.

Art. 1388. A husband and wife cannot derogate from the rights resulting from the husband's marital powers over the person of the wife and his children or which belong to the husband as head of the family, nor from the rights conferred upon the survivor of the husband and wife under the title *Of Paternal Authority* and the title *Of Minority, Guardianship and Emancipation*, nor from the prohibitions contained in the present Code. Civ. C. 212 et seq., 371 et seq., 388 et seq., 476 et seq., 1389 et seq., 1595, 2253.

Art. 1389. They cannot make any agreement or renunciation of which the object would be to change the legal order of succession either with respect to themselves in the succession of their children or descendants or with respect to their children between themselves; without prejudice to the donations inter vivos or mortis causa which may be made in the manner and in the cases specified in the present Code. Civ. C. 723 et seq., 731 et seq., 1081 et seq., 1091 et seq., 1130, 1497, 1527, 1600.

Art. 1390. A husband and wife can no longer stipulate in a general manner that their association shall be governed by the customs, laws or local statutes which were heretofore in force in the various parts of the French territory and which are repealed by the present Code. Civ. C. 1391 et seq., 1497, 1527.

Art. 1391. They may, nevertheless, declare in a

general manner that they intend to marry under the system of community or under the dotal system.

In the first case and under the system of community the rights of the husband and wife and of their heirs are governed by the provisions laid down in chapter II of the present title.

In the second case and under the dotal system their rights shall be governed by the provisions contained in chapter III.

However, if the record of celebration of the marriage indicates that the husband and wife have been married without a contract, the wife is considered, with respect to third parties, as having the capacity of contracting in accordance with the rules of common law, unless she has declared in the record containing her agreement that she has made a marriage contract. Civ. C. 1393 et seq., 1399 et seq., 1540 et seq.

Art. 1392. A simple stipulation to the effect that the wife has settled upon herself, or that another person has settled upon her, certain property as dowry, is not sufficient to subject the property to the dotal system, unless there is an express declaration to that effect in the marriage contract.

Neither does the adoption of the dotal system result from the simple declaration made by the husband and wife that they marry without community or that they shall be separated as to property. Civ. C. 1529 et seq., 1536 et seq., 1540 et seq.

Art. 1393. In default of special stipulations derogating from the system of community or modifying it, the provisions laid down in the first part of chapter II shall constitute the common law of France. Civ. C. 1399 et seq.

Art. 1394. All matrimonial agreements shall be drawn up before the marriage in an instrument made by a notary.

(Law of July 10, 1850). The notary shall read to the parties the last paragraph of article 1391 and also the last paragraph of the present article. It shall be mentioned in the contract that this has been done, under penalty of a fine of ten francs against the notary who has disobeyed the rule.

The notary shall deliver to the parties at the time of signing the contract a certificate on unstamped paper and without cost stating his full names and his place of residence, the names, first names, occupation and residence of the future husband and wife and also the date of the contract. Such certificate shall show that it is to be delivered to the officer of civil status before the celebration of the marriage. Civ. C. 1081 et seq., 1091 et seq., 1317.

Art. 1395. They cannot in any way be altered after the celebration of the marriage. Civ. C. 1396, 1451, 1538, 1543.

Art. 1396. The changes which may have been made before such celebration must be mentioned in an instrument drawn up in the same form as the marriage contract.

Moreover no change or defeasance is valid unless all the persons who were parties to the marriage contract are present and give their consent simultaneously. Civ. C. 1317, 1321, 1397 et seq., 1451.

Art. 1397. All changes and defeasances, even when made in accordance with the requirements of the foregoing article, shall be of no effect with respect to third parties, if they have not been inserted

at the end of the original marriage contract; and the notary shall not be able to deliver an executory copy or certified copies of the marriage contract, without inserting at the end the changes or the defeasances, under penalty of damages to the parties and under a heavier penalty if proper. Civ. C. 1149, 1321, 1335, 1396.

Art. 1398. A minor who is capable of contracting a marriage is capable of making all agreements of which such a contract is susceptible; and the agreements and donations made therein by him are valid, provided he has had in making the contract the assistance of the persons whose consent is necessary for the validity of a marriage. Civ. C. 144 et seq., 388, 1095, 1309 et seq.

Chapter II.

Of the System of Community.

Art. 1399. Community, whether legal or conventional, commences from the day of the marriage contracted before the officer of civil status: it cannot be stipulated that it shall commence at any other time. Civ. C. 75, 1395, 1400 et seq., 1441 et seq., 1451.

First Part.

Of Legal Community.

Art. 1400. Community which is established by the simple declaration that the persons marry under the system of community, or by the non-existence of a contract, is governed by the rules laid down in the six following sections.

SECTION I.

OF WHAT FORMS PART OF THE COMMUNITY AS TO ASSETS AND LIABILITIES.

§ 1. *Of Assets of the Community.*

Art. 1401. The assets of the community comprise:

1° All the personal property which the husband and wife own at the time of the celebration of the marriage, together with all the personal property which comes to them during the marriage, either by way of succession or even donation, if the donor has not expressed a contrary intention.

2° All profits, revenues, interest and arrears, of whatever nature they may be, which have become due or have been collected during the marriage and coming from the property belonging to the husband and wife at the time of the celebration of the marriage, or from the property received by them during the marriage, in any manner whatsoever.

3° All the real estate which is acquired during the marriage. Civ. C. 527 et seq., 583 et seq., 718 et seq., 1402 et seq., 1409 et seq., 1497 et seq.

Art. 1402. Every piece of real estate is considered as a purchase of the community, unless it be proved that the husband or the wife had the ownerhip or legal possession thereof previously to the marriage or that it has come to one of them since the marriage, by way of succession or donation. Civ. C. 1401-3°, 1404 et seq., 1499, 2228 et seq.

Art. 1403. Wood which has been felled and the product of quarries and mines belong to the community in so far as they can be considered as usufruct, in

accordance with the rules laid down in title *Of Usufruct, Use and Habitation.*

If the wood which, according to such rules, might have been felled during the community has not been cut, compensation shall be due to the husband or wife who does not own the property or to his or her heirs.

If the quarries and mines have been opened during the marriage their product only forms part of the community subject to compensation or an indemnity in favor of the husband or wife to whom the same may be due. Civ. C. 521, 552, 590 et seq., 598, 716, 1437, 1468 et seq.

Art. 1404. Real estate which the husband and wife owned at the time of the celebration of the marriage or which comes to them during its continuance, by way of inheritance, does not form part of the community.

However if the husband or wife acquires real estate since the marriage contract, but before the celebration, and it has been stipulated that it should be community property, the real estate acquired during that time shall form part of the community, unless the acquisition has been made in consequence of some clause of the marriage contract, in which case it shall be governed by the agreement. Civ. C. 1396, 1399, 1401 et seq., 1470, 1493, 1497-3°, 1505.

Art. 1405. Donations of real estate which are made during the marriage to one only of the married parties do not form part of the community and belong to the donee alone, unless the donation expressly stipulates that the thing given shall belong to the community. Civ. C. 1134, 1401 et seq., 1470, 1493.

Art. 1406. Real estate abandoned or assigned by the father, mother or other ascendant to the husband or wife either to make up what is due to him or her, or upon condition of paying the donor's debts to third parties, does not form part of the community, subject, however, to compensation or an indemnity. Civ. C. 1075 et seq., 1081 et seq., 1433, 1437, 1473.

Art. 1407. Real estate acquired during the marriage by way of exchange for real estate belonging to the husband or wife does not form part of the community and is subrogated in the place and stead of the real estate which has been conveyed; subject to compensation if there is a balance due Civ. C. 1434 et seq., 1468 et seq., 1493, 1702 et seq.

Art. 1408. A purchase made during the marriage at public sale or otherwise of a portion of real estate of which one of the married persons was the joint owner does not constitute an acquest; but an indemnity shall be due to the community for the sum which it has expended for such purchase.

In case the husband becomes the sole purchaser in his own name of a portion or of all the real estate belonging jointly to the wife, or is the highest bidder, the wife may at the dissolution of the community elect whether she wishes to abandon the property to the community, and the community then becomes the debtor of the wife for the portion of the price due to her, or whether she wants to take the real estate and pay the purchase price to the community. Civ. C. 815 et seq., 883, 1435, 1437, 1468 et seq., 1493, 1686 et seq.

§ 2. *Of the Liabilities of the Community and of the Actions resulting therefrom against the Community.*

Art. 1409. The liabilities of the community are composed of :

1° All the personal debts which the husband and wife owed at the time of the celebration of their marriage or with which the successions coming to them during the marriage are burdened, subject to compensation for all debts relating to real estate belonging individually to either the husband or the wife;

2° The debts contracted by the husband during the community, or by the wife with the consent of the husband, both as to principal and as to arrears or interest, subject to compensation when due;

3° The revenue and interest of annuities or of liabilities, but only when they are personal to both the husband and wife;

4° The repairs to real estate which does not form part of the community and due owing to a usufruct;

5° The debts due for support of the husband or wife, for the education and maintenance of the children and for all other charges resulting from the marriage. Civ. C. 203 et seq., 527 et seq., 605 et seq., 612, 1401, 1410 et seq., 1419 et seq., 1437 et seq., 1473, 1510 et seq., 1905.

Art. 1410. The community is only liable for the personal debts contracted by the wife previously to the marriage, when they are established by an official instrument which has been made before the marriage or when they have been given a positive date before that time, either by registration or by the death of

one or more of the persons who signed such instrument.

A creditor of the wife by virtue of an instrument which has no positive date previously to the marriage can only proceed against her for payment out of the bare ownership of her individual real estate.

A husband who claims to have paid a debt of this kind for his wife cannot ask her or her heirs to repay it. Civ. C. 1235, 1317, 1328, 1413, 1417, 1424, 1426, 1485.

Art. 1411. The debts of a succession of purely personal property which comes to the husband and wife during the marriage shall all be paid out of the community. Civ. C. 724, 870, 1409-1°, 1414 et seq., 1498, 1510 et seq.

Art. 1412. The debts of a succession purely of real estate which comes to the husband or wife during the marriage shall not be paid out of the community; subject nevertheless to the right which belongs to the creditors to proceed against the real estate of such succession to obtain payment.

Nevertheless, if the succession devolves upon the husband, the creditors may proceed to obtain payment either against all the individual property of the husband or even against the property of the community; but in the latter case compensation is due to the wife or to her heirs. Civ. C. 878, 1413 et seq., 1437, 1470, 1493.

Art. 1413. If a succession composed entirely of real estate devolves upon the wife and she has accepted it with the consent of her husband, the creditors of the succession may proceed to recover payment against all the separate property of the

wife; but if the succession has only been accepted by the wife with the authority of the Court upon the refusal of the husband, the creditors, in case the real estate of the succession is insufficient, can only proceed against the other individual property of which the wife has the bare ownership. Civ. C. 217, 219, 776, 1416 et seq., 1424, 1426.

Art. 1414. When the succession devolved upon the husband or wife is partly of personal property and partly of real estate, the debts with which it is burdened shall only be paid out of the community to the extent of the portion which the personal property should contribute towards the payment of debts, taking into account the value of such personal property as compared with the value of the real estate.

Such contributive proportion is fixed according to the inventory which the husband must cause to be drawn up either for his own account, if the succession concerns him personally, or as directing his wife and authorizing her to act, in case the succession devolves upon her. Civ. C. 795 et seq., 1411 et seq., 1415 et seq.

Art. 1415. If no inventory has been made and in all cases in which this fact is prejudicial to the wife, she or her heirs may, upon the dissolution of the community, proceed to recover the indemnities lawfully due and they may even prove the nature and the value of the personal property not inventoried, as well by private documents and papers as by witnesses, and if necessary by common repute.

A husband is never allowed to make such proof. Civ. C. 1411 et seq., 1418, 1442, 1499, 1504.

Art. 1416. The provisions of article 1414 do not prevent the creditors of a succession composed partly of personal property and partly of real estate from proceeding to recover payment out of the property of the community, whether the succession has devolved upon the husband or the wife, when the latter has accepted it with the consent of the husband; all of which is subject to the indemnities respectively due.

The same rule applies if the succession has only been accepted by the wife with the authority of the Court, and if nevertheless the personal property has been mixed with the property of the community without any previous inventory. Civ. C. 219, 1414, 1417 et seq., 1437, 1470, 1493, 1510, 1519, 1524.

Art. 1417. If the succession has only been accepted by the wife by order of the Court after the refusal of the husband, and if an inventory has been made, the creditors can only proceed to recover payment against the personal property or real estate of the said succession, and in case of insufficiency against the other individual property which the wife owns absolutely. Civ. C. 219, 1413, 1424 et seq.

Art. 1418. The rules laid down in articles 1411 and the following, apply to the debts in connection with a donation as well as to those resulting from a succession. Civ. C. 894 et seq.

Art. 1419. Creditors can proceed to recover payment of the debts which the wife has contracted with the husband's consent as well against all the community property as against the property of the husband or wife; subject to the compensation due to the community or the indemnity due to the husband.

Civ. C. 217, 1401, 1409-2°, 1426, 1436 et seq., 1470, 1493, 2208.

Art. 1420. Every debt which has been contracted by the wife by virtue only of a general or special power of attorney of the husband shall be paid by the community; and the creditor cannot proceed to enforce payment either against the wife or against her personal property. Civ. C. 1409-2°, 1431, 1984 et seq., 1990.

Section II.

Of the Administration of the Community and of the Effects of the Acts of the Husband or Wife with respect to Conjugal Partnership.

Art. 1421. The husband has the sole management of the community property.

He can sell, convey and mortgage it without the concurrence of the wife. Civ. C. 818, 1401 et seq., 1422 et seq., 1428 et seq., 1531, 1549, 2124, 2208.

Art. 1422. He cannot dispose inter vivos of the real estate belonging to the community, nor of the whole or part of the personal property, without consideration, unless it is for the establishment of children of the marriage.

Nevertheless he may dispose, without consideration and specifically, of the personal property in favor of all persons, provided he does not retain the usufruct thereof for himself. Civ. C. 203 et seq., 578, 894, 1081 et seq., 1439, 1469.

Art. 1423. A donation mortis causa made by the husband cannot exceed his share of the community.

If he has given in this manner a thing belonging to the community, the donee can only claim the thing

in kind, if, owing to the result of a division it falls into the share of the husband's heirs: if the thing does not fall into the share of such heirs, the legatee is entitled to be compensated for the whole value of the thing given out of the share of the husband's heirs in the community and out of the individual property of the latter. Civ. C. 1021. 1467 et seq.

Art. 1424. The fines imposed upon the husband for a crime which does not occasion *civil death* (1) can be enforced against the community property, subject to the indemnity due to the wife: those imposed upon the wife can only be collected from the individual property of which she has the bare ownership so long as the community last. Civ. C. 23, 25, 1409 et seq., 1425 et seq., 1437.

Art. 1425. (Repealed by Law of May 31, 1854) *Sentences passed upon the husband or wife for a crime occasioning civil death* (1) *can only be enforced against his or her share of the community and his or her individual property.*

Art. 1426. The acts performed by the wife without the husband's consent, and even with the authority of the Court, do not affect community property unless she has acted as a public trader and for the purposes of her trade. Civ. C. 217 et seq., 225, 1413, 1416 et seq., 1427, 1990.

Art. 1427. A wife cannot bind herself, nor bind the community property, even to get her husband out of prison or for the establishment of her children in

(1) Civil death was abolished by the Law of 31st May, 1854.

her husband's absence, without being authorized by the Court. Civ. C. 203 et seq., 217 et seq., 1535, 1538, 1555 et seq.

Art. 1428. A husband has the management of all the individual property of the wife.

He can prosecute alone all personal and possessory actions which belong to the wife.

He cannot convey his wife's individual real estate without her consent.

He is responsible for all damages to the individual property of the wife caused by his failure to take proper measures of preservation. Civ. C. 213, 818, 1137, 1382, 1421, 1429 et seq., 1531, 1536, 1549, 1562, 1576, 2254 et seq.

Art. 1429. Leases made by the husband alone of property belonging to the wife for a time exceeding nine years are, in case of dissolution of the community, only binding upon the wife or her heirs for the time which remains to run, either of the first period of nine years, if it has not expired, or of the second, and so on, so that the lessee only has the right to complete the time of tenancy of the period of nine years in which he finds himself. Civ. C. 595, 1430, 1709 et seq., 1718.

Art. 1430. Leases for nine years or less which the husband alone has executed or renewed of property of his wife more than three years before the expiration of the running lease, in case of country property, and more than two years before such time, in case of dwellings, shall be void unless they have commenced to run previously to the dissolution of the community. Civ. C. 1429.

Art. 1431. A wife who binds herself jointly with

her husband as regards matters of the community or relating to the husband, is, with respect to him, only presumed to have bound herself as surety; she must be indemnified against the obligation which she has assumed. Civ. C. 1200 et seq., 1432, 1438, 1478, 1482 et seq 1487, 1494 et seq., 2011 et seq.

Art. 1432. A husband who guarantees, jointly and severally or otherwise, a sale made by his wife of some of her individual real estate, is likewise entitled, if he is attacked, to be indemnified either out of her share of the community or out of her individual property. Civ. C. 1431.

Art. 1433. If real estate belonging to the husband or wife has been sold, or if land burdens relating to a tenement belonging individually to one of them, have been redeemed in cash and the price has been paid to the community without any part of it being reinvested for the benefit of the owner, such price shall be taken out of the community for the benefit of the husband or wife who was the owner, either of the real estate sold or of the burdens redeemed. Civ. C. 637 et seq., 686 et seq., 1434 et seq., 1437, 1470, 1473, 1493.

Art. 1434. A reinvestment is supposed to have been made for the benefit of the husband whenever he has declared at the time of the purchase that it has been paid for with monies coming from the sale of real estate which belonged to him individually and that such purchase is to stand as a reinvestment for his benefit. Civ. C. 1435 et seq., 1553, 1595.

Art. 1435. A declaration of the husband that the purchase is made with the monies coming from a sale of real estate made by the wife and is to be a reinvest-

ment for her benefit is not sufficient, if such reinvestment has not been formally accepted by the wife; if she has not accepted it, she simply has the right upon the dissolution of the community to the repayment of the price of her real estate so sold. Civ. C. 1407 et seq., 1437, 1470, 1493, 1559, 1595.

Art. 1436. Compensation for the price of real estate belonging to the husband is only taken out of the assets of the community; compensation for the price of real estate belonging to the wife is taken out of the individual property of the husband in case the community property is insufficient. In all cases the compensation is only effected on the basis of the sale, whatever allegations may be made concerning the value of the real estate sold. Civ. C. 1437, 1468 et seq.

Art. 1437. Whenever a sum is taken out of the community to pay the individual debts or charges of the husband or wife, such as the price or part of the price of individual real estate or the redemption of land burdens or the recovery, preservation or improvement of his or her individual property, and generally whenever the husband or wife has derived a personal benefit from property belonging to the community, he or she owes compensation therefor. Civ. C. 1403, 1406 et seq., 1412, 1415 et seq., 1419, 1423 et seq., 1431, 1433 et seq., 1468 et seq., 1473.

Art. 1438. If the father and mother have jointly endowed a child of the marriage without mentioning what portion they meant to contribute, each of them is supposed to have given a half, whether the dowry has been given or agreed to be given out of property of the community or out of individual property of the husband or wife.

In the second case the husband or wife whose real estate or personal property has been given as dowry has against the property of the other a cause of action for an indemnity of one-half of such dowry based upon its value at the time of the donation. Civ. C. 203 et seq., 1081 et seq., 1422, 1431, 1469, 1544 et seq.

Art. 1439. A dowry given by the husband alone to a child of the marriage out of property of the community is chargeable to the community; and in case the wife accepts the community she is liable for one half of the dowry, unless the husband has expressly declared that he is liable for the whole or a greater portion than a half. Civ. C. 1422, 1427, 1438.

Art. 1440. Every person who gives a dowry is obliged to guarantee it; and the interest runs from the day of the marriage, even if time is allowed for payment, unless there is some stipulation to the contrary. Civ. C. 75, 1153 et seq., 1186 et seq., 1547 et seq., 1570, 1626 et seq., 1907.

Section III.

Of the Dissolution of the Community and of some of its Consequences.

Art. 1441. A community is dissolved: 1° by natural death; 2° *by civil death* (1); 3° by divorce; 4° by separation from bed and board; 5° by separation of property. Civ. C. 23 et seq., 124, 129 et seq., 227, 311, 1443 et seq.

Art. 1442. The failure to make an inventory after the natural *or civil death* (1) of the husband

(1) Civil death was abolished by the Law of 31st May, 1854.

or wife does not cause the community to continue, subject to the proceedings which interested parties may institute with relation to such property and effects as the community was composed of and as to which proof may be made as well by documents as by common repute.

If there are minor children, the failure to have made an inventory also causes the surviving husband of wife to lose the enjoyment of the income of such children; and the assistant guardian who has not compelled the husband or wife to make an inventory is jointly and severally liable with him or her with respect to all judgments given in favor of the minors. Civ. C. 384 et seq., 420, 451, 795, 1415, 1456, 1482 et seq., 1504.

Art. 1443. A separation of property can only be sued for in Court by the wife whose dowry is in danger and when the husband's affairs are in such disorder that there is reason to fear that his property will not be sufficient to answer for the wife's rights and claims.

Every voluntary separation is void. Civ. C. 6, 311, 1133, 1172, 1387 et seq., 1395, 1444 et seq., 1563.

Art 1444. A separation of property, although ordered by the Court, is void unless it has been followed by an actual settlement of the rights and claims of the wife made in a public instrument, to the extent of the husband's property, or at least unless proceedings have been commenced within a fortnight of the judgment and have not been interrupted since then. Civ. C. 1595-1°.

Art. 1445. Every separation of property must be

made public before it takes effect, by a notice posted on a board intended for that purpose in the principal court-room of the Tribunal of First Instance, and also, if the husband is a merchant, banker or trader, in the principal court-room of the Tribunal of Commerce of the place of his domicile, and if all this has not been done, the judgment shall be void.

A judgment ordering a separation of property extends back as to its effects to the day of the beginning of the suit.

Art. 1446. The wife's personal creditors cannot apply for a separation of property without her consent.

Nevertheless, in case of bankruptcy or insolvency of the husband, they may enforce her rights as debtor to the extent of the amount of their claims. Civ. C. 1166, 1410, 1447, 1464.

Art. 1447. The husband's creditors can attack the separation of property ordered and even effected which tends to defraud them of their rights: they can even intervene in the suit for separation to oppose it. Civ. C. 1166 et seq. 1464.

Art. 1448. A wife who has obtained a separation of property must contribute as well towards the household expenses as towards those of the education of the children of the marriage, in proportion to her means and those of her husband.

She shall bear these expenses entirely if the husband is left without means. Civ. C. 203, 212, 1537, 1575.

Art. 1449. A wife separated, either from bed and board or only as to property, regains the independent management of her property.

She can dispose of her personal property and convey it.

She cannot dispose of her real estate without the consent of her husband or without being authorized by the Court, in case of his refusal. Civ. C. 215, 217 et seq., 311, 1124, 1421, 1450 et seq., 1536 et seq., 1576.

Art. 1450. A husband is not liable for the failure to invest or reinvest for her benefit the proceeds of real estate which the wife who is separated as to property has conveyed with the consent of the Court, unless he has taken part in the contract or it is proved that the funds have been received by him or have been used for his benefit.

He is answerable for the omission to invest or reinvest for the benefit of the wife, if the sale has been made in his presence and with his consent : he is not liable for the soundness of such investment. Civ. C. 1426 et seq.

Art. 1451. A community which is dissolved by a separation, either from bed and board or of property only, can be reestablished by consent of both parties.

This can only be done by an instrument executed in the presence of notaries, of which a record remains and of which a certified copy is published in the manner set forth in article 1445.

In such case the community which is reestablished produces its effect from the time of the marriage; things are put back in the same state as if there had been no separation, without prejudice, nevertheless, to the fulfilment of the acts which have been performed during such interval by the wife in accordance with article 1449.

Any agreement by which the husband and wife reestablish their community under different conditions from those which governed it previously shall be void. Civ. C. 6, 309, 900, 1133, 1172, 1317, 1394 et seq., 1443 et seq.

Art. 1452. A dissolution of community brought about by a divorce or a separation from bed and board or of property only does not entitle the wife to her rights as survivor; but she retains the right to enforce them upon the natural *or civil death* (1) of her husband. Civ. C. 299, 311, 1518.

Section IV.

Of Acceptance of the Community and of the Renunciation which can be made, with the Conditions relating thereto.

Art. 1453. After the dissolution of the community, the wife or her heirs and legal representatives have the right to accept or renounce it: any agreement to the contrary is void. Civ. C. 1395, 1463, 1466, 1492, 1520, 1524.

Art. 1454. A wife who has interfered with the property of the community can no longer renounce. Acts of pure administration or preservation do not amount to an interference. Civ. C. 778 et seq., 1463, 2256.

Art. 1455. A wife of full age who, in a public instrument, has admitted that she was married under the community system can no longer renounce, nor

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cause such stand to be taken away from her, even if she has taken it before she has the inventory drawn up, unless there has been some fraud on the part of the husband's heirs. Civ. C. 488, 776, 778, 783, 1116, 1304.

Art. 1456. A wife who survives and wishes to retain the right to renounce the community must, within three months of the day of her husband's death, cause a true and faithful inventory to be made of all the community property, in the presence of the husband's heirs or after they have been duly summoned.

Upon the closing of such inventory she must affirm in the presence of the public officer who has drawn it up, that it is true and correct. Civ. C. 793 et seq., 1463, 1482.

Art. 1457. She must make her renunciation, at the clerk's office of the Tribunal of First Instance in the district where her husband had his residence, within three months and forty days after his death: this instrument must be recorded in the register kept to receive renunciations of successions. Civ. C. 102, 110, 784, 793, 795 et seq., 1458 et seq., 1492 et seq.

Art. 1458. A widow may, according to circumstances, apply to the Tribunal of First Instance for an extension of the time fixed by the foregoing article for her renunciation: such extension shall, if necessary, be ordered after hearing the husband's heirs or after they have been duly summoned. Civ. C. 798 et seq., 1461 et seq.

Art. 1459. A widow who has not made her renunciation within the time above specified does not

forfeit her right to renounce, if she has not interfered and has made an inventory: proceedings, however, may be taken against her as being in community until she has renounced, and she must pay the costs up to the time of her renunciation.

Proceedings can likewise be brought against her after the expiration of forty days from the closing of the inventory, if it has been closed before the three months. Civ. C. 789, 794 et seq., 797, 800, 1454, 1456.

Art. 1460. A widow who has converted or concealed effects of the community is held to be in community, notwithstanding her renunciation: the same rule applies to her heirs. Civ. C. 792, 801, 1477.

Art. 1461. If a widow dies before the expiration of the three months without having made or completed the inventory, the heirs shall have a new period of three months from the death of the widow to make or complete the inventory and of forty days for deliberation after the inventory is closed.

If the widow dies after having completed the inventory, her heirs shall have a new period of forty days from the time of her death for deliberation.

They may moreover renounce the community in the manner hereabove set forth; and articles 1458 and 1459 shall apply to them. Civ. C. 784, 1453, 1457, 1466, 1475, 1491.

Art. 1462. (Repealed by law May 31, 1854). *The provisions of articles* 1456 *and the following shall apply to the wives of individuals civilly dead from the time the civil death has commenced.*

Art. 1463. A woman who is divorced or separated

from bed and board and who has not accepted the community, within the three months and forty days since the divorce or the separation has been finally decreed, is supposed to have renounced it, unless, within the time so allowed, she has obtained an extension from the Court, after the husband has appeared or has been duly summoned. Civ. C. 311, 1444, 1456 et seq., 1518.

Art. 1464. The creditors of the wife may attack the renunciation made by her or her heirs which would defraud them of their claims, and may accept the community for their own account. Civ. C. 788, 1166 et seq., 1446 et seq., 2225.

Art. 1465. A widow, whether she accepts or renounces the community, has the right, during the three months and forty days which are allowed her for making the inventory and for deliberation, to take her food and the food of the servants out of the existing provisions, and if there be none, to borrow for that purpose on the credit of the assets of the community, provided she makes use of such right with moderation.

She owes no rent for the premises she may have occupied during such time in a house forming part of the community or belonging to the husband's heirs; and if the house which the husband and wife lived in at the time of the dissolution of the community was occupied by them by virtue of a lease, the wife shall not, during the same time, contribute to the payment of the rent, which shall be taken out of the assets of the community. Civ. C. 1409-5°, 1495, 1570.

Art. 1466. In case of dissolution of the community

by the death of the wife, her heirs may renounce the community within the time and in the manner prescribed by law for the surviving wife. Civ. C. 724, 781, 1453, 1456 et seq., 1460 et seq., 1464, 1475, 1491.

Section V.

Of Division of the Community after Acceptance.

Art. 1467. After acceptance of the community by the wife or her heirs, the assets are divided and the liabilities are assumed in the manner hereinafter set forth. Civ. C. 815 et seq., 1401, 1409, 1453, 1468 et seq.

§ 1. — *Of Division of Assets.*

Art. 1468. The husband or wife or their heirs must return to the corpus of the existing property everything they owe the community by way of compensation or indemnity, according to the rules above prescribed in section II of the first part of the present chapter. Civ. C. 829, 843 et seq., 858, 1406 et seq., 1412, 1419, 1421 et seq., 1437.

Art. 1469. The husband or wife, or his or her heirs, must likewise return the sums which have been taken out of the community or the value of the property which he or she has used to endow a child of another marriage or to endow personally a child of their marriage. Civ. C. 829 et seq., 1081 et seq., 1422, 1438 et seq., 1544.

Art. 1470. Out of the corpus of the property the husband and wife or his or her heir take:

1° His or her individual property which has not become community property, if it exists in kind, or the property which has been acquired by way of reinvestment;

2° The price of the real estate belonging to him or her which has been conveyed during the community and which has not been reinvested.

3° The indemnities which are due by the community. Civ. C. 1403 et seq., 1419, 1431 et seq., 1471.

Art. 1471. The compensation due to the wife takes precedence of that due to the husband.

It is taken as to the property which does not exist in kind, first out of the ready money, then out of the personal property, and subsequently out of the real estate of the community: in the last case the choice of the real estate is left to the wife and to her heirs. Civ. C. 1436, 2093, 2121.

Art. 1472. A husband can only enforce his right to take back as against the property of the community.

The wife and her heirs in case the community property should be insufficient, can enforce their right to take back against the individual property of the husband. Civ. C. 1421, 1436, 1495, 2135.

Art. 1473. The reinvestments and compensation due to the husband or wife by the community, and the compensation and indemnities due by them to the community, bear interest as a matter of right from the day of the dissolution of the community. Civ. C. 1153 et seq., 1440 et seq., 1479, 1905 et seq.

Art. 1474. After all the returns due to the husband and wife have been satisfied out of the assets,

the surplus is divided by halves between the husband and wife or those who represent them. Civ. C. 1476, 1482, 1509.

Art. 1475. If the wife's heirs do not agree and one has accepted the community while the other has renounced, the one who has accepted can only take his individual and hereditary share out of the property which falls to the wife's portion.

The husband retains the balance and remains liable to the heir who renounces for the rights which the wife might have exercised in case of renunciation, but only to the extent of the individual hereditary share of the heir who has renounced. Civ. C. 782, 870, 873, 1466, 1491, 1495.

Art. 1476. In all other respects, the division of the community, in connection with the proceedings, the judicial sale of real estate when necessary, the effects of the division, the warranty resulting therefrom, and the balances due, is subject to all the rules specified in the title *Of Successions* for divisions between co-heirs. Civ. C. 815 et seq., 883 et seq., 2103-3°, 2109.

Art. 1477. If the husband or wife has diverted or concealed any effects of the community, he or she shall be deprived of his or her share of said effects. Civ. C. 792, 801, 1460.

Art. 1478. If either the husband or wife remains the personal creditor of the other after the division is closed, for instance, when the proceeds of his or her property have been used to pay a personal debt of the other, or for any other cause, he or she can enforce his or her claim against the share of the community

coming to the other or against the other's individual property. Civ. C. 1432, 1479 et seq., 1511, 1513.

Art. 1479. The personal claims which the husband or wife have to bring against each other only bear interest from the day a legal action has been brought. Civ. C. 1153, 1440, 1473, 1512, 1570.

Art. 1480. The donations which the husband or wife may have made one another shall only be taken out of the share of the donor in the community and out of such donor's individual property. Civ. C. 1091, 1438 et seq., 1478, 1483.

Art. 1481. The wife's mourning shall be paid for by the heirs of the predeceased husband.

The amount of such mourning depends upon the husband's fortune.

It is due to the wife even when she renounces the community. Civ. C. 1465, 1492, 1570.

§ 2. — *Of Liabilities of the Community and of Contribution to Debts.*

Art. 1482. Debts of the community are due by the husband and wife or by their heirs, each for one half : the expenses for the seals, the inventory, the sale of personal property, the liquidation, the judicial sale of real estate and the division form part of such debts. Civ. C. 1409 et seq., 1414, 1490, 1510.

Art. 1483. A wife is only liable for the debts of the community, either with respect to the husband or with respect to the creditors, to the extent of her share, provided a true and faithful inventory has been made, and taking into account as well the contents of such inventory as what has come to her under the division. Civ. C. 1456, 1474, 1486, 1510 et seq.

Art. 1484. The husband is liable for all the debts of the community contracted by him; subject to his remedy against the wife or her heirs for one-half of such debts. Civ. C. 1478, 1482, 1486.

Art. 1485. He is only liable for one-half of those which were personal to the wife and have fallen into the community. Civ. C. 1410, 1413.

Art. 1486. The wife can be sued for all the debts incurred by her and which have fallen into the community, subject to her remedy against the husband or his heir, for one-half of such debts. Civ. C. 1478, 1484, 1490.

Art. 1487, The wife, even when personally liable for a debt of the community, can only be sued for one-half of such debt, unless she is jointly and severally liable. Civ. C. 1200, 1431, 1489.

Art. 1488. The wife who has paid a debt of the community beyond her half, cannot claim from the creditor the return of the amount paid in excess, unless the receipt states that what she paid was for her half. Civ. C. 1235, 1377, 1410.

Art. 1489. The husband or wife who, owing to the effect of a mortgage encumbering the real estate which has come to him or her upon a division, is sued for the whole of a community debt, has as a matter of right a remedy for one-half of such debt against the other or his or her heirs. Civ. C. 873, 1488, 2114.

Art. 1490. The foregoing provisions do not prevent one or more of the coparceners from being made to pay, upon the division, a portion of the

debts other than the half and even to pay them in full.

Whenever one of the coparceners has paid debts of the community beyond the portion for which he was liable, the one who has paid too much has a remedy against the other. Civ. C. 1484, 1486.

Art. 1491. Everything hereabove stated with respect to the husband or wife applies to the heirs of either of them; and such heirs have the same rights and are subject to the same actions as the married person whom they represent. Civ. C. 724, 1461, 1466, 1475, 1495, 1566.

Section VI.

Of Renunciation of the Community and its Effects.

Art. 1492. The wife who renounces loses all her rights to the property of the community and even to the personal property which has become part of it through her.

She only takes back the linen and clothes for her own use. Civ. C. 1454, 1457, 1493 et seq., 1495-2°, 1566-2°.

Art. 1493. The wife who renounces has the right to take back:

1° The real estate belonging to her, when it exists in kind, or the real estate which has been purchased by way of reinvestment;

2° The proceeds of the real estate belonging to her which has been conveyed and which proceeds have not been reinvested with her consent, as above stated;

3° All the indemnities which may be due to her

from the community. Civ. C. 1404 et seq., 1433 et seq., 1470.

Art. 1494. The wife who renounces is released from all contribution to the debts of the community, as well with respect to the husband as with respect to the creditors. However, she remains liable towards the creditors when she has bound herself jointly with her husband or when the debt which has become a community debt was one for which she was originally liable; all of which being subject to her remedy against the husband or his heirs. Civ. C. 1431, 1482, 1487.

Art. 1495. She can enforce all causes of action and rights to take back, in the manner above set forth, as well against the community property as against the individual property of the husband.

Her heirs can do the same, with the exception of what relates to taking linen and clothes and to board and lodging during the time allowed to make the inventory and for deliberation, which rights are purely personal to the surviving wife. Civ. C. 1054, 1465, 1492, 1514.

Provision relating to Legal Community when either the Husband or Wife, or both, have Children of previous Marriages.

Art. 1496. Everything hereabove stated shall be followed, even when either the husband or wife, or both of them, have children of previous marriages.

If, however, the merger of the personal property and of the debts has occasioned an advantage for the benefit of the husband or wife greater than what is allowed by article 1098 of the title *Of Donations*

Inter Vivos and Of Wills, the children of the first marriage shall be entitled to bring an action for reduction against such husband or wife. Civ. C. 1098, 1401, 1527.

Second Part.

Of Conventional Community and of Agreements which may modify or even exclude legal Community.

Art. 1497. The husband and wife may modify the legal community by all sorts of agreements not prohibited by articles 1387, 1388, 1389, and 1390.

The principal changes are those which take place by making stipulations in one of the following ways, viz:

1° That the community shall only apply to acquests;

2° That the present or future personal property shall not fall into the community or shall only be included for a part;

3° That all or part of the present or future real estate shall be included by way of a conversion clause;

4° That the husband and wife shall pay individually the debts which they had previously to the marriage.

5° That in case of renunciation, the wife shall be able to take back the property she has contributed, free of all charges.

6° That the survivor shall be entitled to a preciput;

7° That the husband or wife shall have unequal shares;

8° That there shall exist between them a universal community. Civ. C. 1387 et seq., 1498, 1500 et seq., 1510, 1514, 1520 et seq.

SECTION I.

OF COMMUNITY REDUCED TO ACQUESTS.

Art. 1498. When the husband and wife stipulate that there shall only be a community of acquests between them, they are supposed to exclude from the community the present and future debts of each of them and their respective present and future personal property.

In such case, and after the husband and wife have each taken back the property contributed by them, of which due proof shall be made, the division is limited to the acquests made together or separately during the marriage by the husband and wife and resulting as well from the common work as from the savings produced by the revenue and income of the property of the husband and wife. Civ. C. 1404 et seq., 1581.

Art. 1499. (Law of April 29, 1924). The personal property existing at the time of the marriage or which has come to them since then is considered as constituting acquests, unless proof to the contrary is made, in accordance with common law, with regard to third parties.

Between husband and wife the mode of making proof is governed by articles 1502 and 1504. Civ. C. 527 et seq., 535, 1402, 1415, 1504, 1581.

SECTION II.

OF THE CLAUSE EXCLUDING PERSONAL PROPERTY, WHOLLY OR IN PART, FROM THE COMMUNITY.

Art. 1500. The husband and wife may exclude all their present or future personal property from the community.

When they stipulate that they shall reciprocally include some of such property in the community up to the amount of a fixed sum or value, they are supposed by that fact alone to have reserved the balance. Civ. C. 1401, 1421 et seq., 1503 et seq.

Art. 1501. Such clause makes the husband or wife liable to the community for the sum which he or she has promised to contribute and compels him or her to prove that such contribution has been made. Civ. C. 1315, 1468, 1502 et seq., 1511, 1845 et seq.

Art. 1502. The contribution is sufficiently proved as to the husband by the declaration inserted in the marriage contract that his personal property is of a stated value.

It is sufficiently proved as to the wife by the receipt given by the husband to her or to those who have endowed her. Civ. C. 1501, 1504.

Art. 1503. Both the husband and wife have the right to take back and deduct, at the time of the dissolution of the community, the increase in value of the personal property which he or she brought at the time of the marriage or of the property which has come to him or her since then, over his or her contribution to the community. Civ. C. 1428, 1470, 1498, 1531 et seq.

Art. 1504. The personal property which comes to either the husband or wife during the marriage must be identified by an inventory.

If there is no inventory of the personal property which has come to the husband or no title sufficient to show its nature and value, after deducting the liabilities, the husband cannot enforce his right to take back such personal property.

If there is no inventory of the personal property belonging to the wife, she or her heirs are entitled to prove the value of such personal property, either by documents or by witnesses or by common repute. Civ. C. 1415, 1442, 1499.

Section III.

Of the Clause converting Real Estate into Personal Property.

Art. 1505. When the husband and wife or one of them has included in the community all or part of their present or future real estate, this clause is called a conversion clause. Civ. C. 1401 et seq., 1497-3°, 1506 et seq.

Art. 1506. A conversion clause can be limited or unlimited.

It is limited when the husband or wife has declared that he or she wishes to convert and include in the community certain real estate either wholly, or to the extent of a given sum.

It is unlimited when the husband or wife has simply declared that he or she includes his or her real estate in the community up to a given sum. Civ. C. 1507 et seq.

Art. 1507. The effect of a limited conversion clause is to make the real estate to which it applies community property in the same manner as personal property.

When a part of the real estate or all the real estate of the wife is thus converted, the husband can dispose of it in the same way as the other effects of the community and can convey the whole of it.

If the real estate is only thus converted for a given

sum, the husband can only convey it with the wife's consent; but he can mortgage it without her consent to the extent only of the portion thus converted. Civ. C. 1401 et seq., 1421 et seq.

Art. 1508. A non specific conversion clause does not confer on the community the ownership of the real estate to which it applies : its effect is limited to compelling the husband or wife who has consented to it, to include in the assets at the time of the dissolution of the community, some of the real estate up to the amount promised by him or her.

The husband cannot, as in the foregoing article, convey the whole or part of the real estate to which the non specific conversion clause applies without the consent of his wife; but he can mortgage it to the extent of such conversion clause. Civ. C. 1421, 1426, 1428, 2125.

Art. 1509. The husband or wife who has subjected an inheritance to a conversion clause has at the time of the division the right to retain it by deducting from his or her share the value which it then has; and his or her heirs have the same right. Civ. C. 724, 1474.

Section IV.

Of the Clause of Separation of Debts.

Art. 1510. (Law of April 29, 1924). The clause by which the husband and wife agree that they will pay separately their personal debts binds them upon the dissolution of the community to respectively make good to each other the debts which are proved to have been paid by the community, for account of the one who owed them.

This obligation exists in the same manner whether an inventory has been made or not. Civ. C. 1166, 1409 et seq., 1437, 1473, 1478 et seq., 1482 et seq., 1497-4°, 1511 et seq.

Art. 1511. When the husband and wife bring into the community a certain sum or a specific thing, such contribution carries with it a tacit agreement that it is not burdened with any debts contracted previously to the marriage; and the husband or wife who is indebted shall make good to the other all the debts which lessen the value of the contribution promised. Civ. C. 1437, 1478 et seq., 1501, 1503.

Art. 1512. The clause of separation of debts does not prevent the community from being charged with the interest and arrears which have accrued since the marriage. Civ. C. 612, 1154, 1409-2°, 3°, 1478, 1907.

Art. 1513. When the community is sued for the debts of a husband or wife who has been declared in the marriage contract to be free and exempt from all debts previously to the marriage, the other is entitled to an indemnity which is taken either out of the share in the community of the one who is so indebted or out of his or her individual property; and in case of insufficiency, such indemnity can be claimed by way of guarantee from the father, the mother, the ascendant or the guardian who has declared that such husband or wife was free of debt.

Such guarantee may even be enforced by the husband during the community if the debt is due by the wife; subject in such case to the repayment due by the wife or her heirs to the guarantors after the dissolution

of the community. Civ. C. 1382 et seq., 1410 et seq., 1437, 1441, 1478.

Section V.

Of the Right granted to the Wife to take back her Contribution free and clear.

Art. 1514. The wife may stipulate that in case of renunciation of the community she can take back all or part of what she has contributed, either at the time of the marriage or since; but this stipulation cannot extend beyond the things which she has positively specified, nor apply to other persons than those mentioned.

For instance, the right to take back the personal property which the wife brought upon the marriage does not extend to the property which has come to her during the marriage.

Moreover, the right granted to the wife does not extend to the children; and the right granted to the wife and the children does not extend to the ascendants or collateral heirs.

In all cases contributions can only be taken back after the personal debts of the wife which the community might have paid have been deducted. Civ. C. 1401, 1500 et seq., 1511, 1515, 1525, 1845 et seq., 1855.

Section VI.

Of Conventional Preciput.

Art. 1515. The clause by which the surviving husband or wife is authorized to take, before any division is made, a certain sum or a certain quantity of personal effects in kind only gives the surviving wife

the right to take the property when she accepts the community, unless the marriage contract has reserved such right to her, even if she renounces.

Apart from this exception, the preciput only operates as to the divisible assets and not against the individual property of the predeceased husband or wife. Civ. C. 1394, 1401, 1470 et seq., 1497-6°, 1516 et seq.

Art. 1516. Preciput is not looked upon as an advantage subject to the formalities of donations, but as a marriage agreement. Civ. C. 931, 1091, 1387, 1394, 1525, 1527.

Art. 1517. Preciput takes effect upon natural *or civil* death (1). Civ. C. 23, 25, 227, 1441.

Art. 1518. When the dissolution of the community takes place by divorce or separation from bed and board there is no occasion for delivery of the preciput at that time; but the husband or wife who has obtained either the divorce or the separation from bed and board retains his or her right to the preciput in case of survivorship. If it is the wife, the sum or the thing which forms the preciput always remains with the husband provisionally, on condition of giving security. Civ. C. 209 et seq., 306, 311, 1452, 2011.

Art. 1519. The creditors of the community always have the right to cause the things forming part of the preciput to be sold, subject to the remedies of the husband or wife in accordance with article 1515. Civ. C. 1416, 1515.

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(1) Civil death was abolished by the law of 31st May, 1854.

SECTION VII.

OF THE CLAUSES BY WHICH UNEQUAL SHARES OF THE COMMUNITY ARE AWARDED TO THE HUSBAND AND WIFE.

Art. 1520. The husband and wife may modify the equal partition established by law, either by giving to the survivor or his or her heirs, a share less than half of the community, or by only giving to such survivor a fixed sum for all community rights or by stipulating that in certain cases the whole community shall belong to the surviving husband or wife or to one of them only. Civ. C. 1474, 1497-7°, 1521 et seq., 1524 et seq.

Art. 1521. When it has been agreed that the husband or wife or his or her heirs shall only be entitled to a certain part of the community, such as a third or a fourth, the husband or wife or his or her heirs thus limited shall only be liable for the debts of the community in proportion to the share of the assets which they take.

The agreement is void if it compels the husband or wife or his of her heirs thus limited to bear a larger portion or if it exonerates them from bearing a portion of the debts equal to what they take in the assets. Civ. C. 6, 870, 900, 1133, 1172, 1387, 1811, 1855.

Art. 1522. When it is agreed that the husband or wife or their heirs shall only be entitled to claim a certain sum for all his or her rights in the community, the clause is a bargain which compels the other or his or her heirs to pay the sum agreed upon, whether the community is solvent or insolvent or able or not to pay the amount. Civ. C. 1134, 1523 et seq.

Art. 1523. If the clause only establishes the bargain with respect to the heirs of the husband or wife, he or she, in case of survivorship, is entitled to one half upon the legal partition. Civ. C. 1474 et seq.

Art. 1524. The husband or his heirs, when they keep all the community property by virtue of the clause contained in article 1520, are obliged to pay all the community debts.

In such case the creditors have no remedy against the wife or her heirs.

If the surviving wife is the one who, in consideration of a stipulated sum, has the right to retain all the community property as against the husband's heirs she may elect either to pay them such sum and remain liable for all the debts, or to renounce the community and abandon to the husband's heirs all the property and liabilities. Civ. C. 1453, 1483 et seq., 1492 et seq.

Art. 1525. The husband and wife have the right to agree that all the community property shall belong to the survivor or to one of them only, but the heirs of the other can then take back the contributions or the capital derived from their principal and which have fallen into the community.

Such an agreement is not considered a liberality subject to the rules relating to donations, either as to substance or as to form, but simply a stipulation in connection with the marriage and between the contracting parties. Civ. C. 931, 1091 et seq., 1394, 1516, 1527.

Section VIII.

Of Community under Universal Title.

Art. 1526. A husband and wife may by their marriage contract establish a universal community of their present and future personal property and real estate, or only of all their present property or only of all their future property. Civ. C. 1401, 1509, 1837.

Art. 1527. That which is contained in the eight foregoing sections does not confine to their precise provisions, the conditions which may govern a conventional community.

The husband and wife may make all other conditions as is stated in article 1387, subject however, to the modifications contained in articles 1388, 1389, 1390.

Nevertheless, in case there should be children of a previous marriage, any agreement intended by its effects to give to the husband or wife more than the share allowed by article 1098 of the title *Of Donations Inter Vivos and of Wills* shall be void with respect to everything exceeding such portion; but the mere profits resulting from common work or the savings from the respective income, although unequal, of the husband and wife, are not considered as a liberality made to the detriment of the children of the first marriage. Civ. C. 1098, 1387, 1496, 1516, 1525.

Art. 1528. Conventional community is governed by the rules of legal community in all cases excepting when modifications have been implicitly or explicitly made by the contract. Civ. C. 1400 et seq., 1497 et seq.

Section IX.

Of Conditions excluding Community.

Art. 1529. When, without submitting themselves to the dotal system, the husband and wife declare that they marry without community, or shall be separated as to property, the effects of such an agreement shall be regulated as follows. Civ. C. 1387, 1392, 1530 et seq., 1536 et seq.

§ 1. *Of the Clause providing that the Husband or Wife marry without community.*

Art. 1530. A clause providing that the husband and wife marry without community does not give the wife the right to manage her property nor to collect the income thereof : such income is supposed to go to the husband to defray the household expenses. Civ. C. 203, 214, 1421, 1531 et seq., 1540, 1549.

Art. 1531. The husband retains the management of the personal property and real estate of the wife, and in consequence, the right to collect all the personal property which she bring as dowry or which comes to her during the marriage, subject to the restitution thereof which he must make after the dissolution of the marriage or after the separation of property which may be ordered by the Court. Civ. C. 227, 311, 1421 et seq., 1428, 1443 et seq.

Art. 1532. If the personal property brought as dowry by the wife or which comes to her during the marriage includes things which cannot be used without being consumed, a schedule and appraisal shall be added to the marriage contract or an inventory shall be made at the time they become due, and the

husband must return their value according to the appraisal. Civ. C. 453, 587, 589, 600, 943, 950, 1502 et seq., 1551, 1556.

Art. 1533. The husband is liable for all expenses incidental to the usufruct. Civ. C. 585 et seq., 600 et seq., 1401-2°, 1550, 1562 et seq., 1571, 1580.

Art. 1534. The clause contained in this subdivision does not prevent a stipulation being made to the effect that the wife may receive every year, upon her own receipt, a certain portion of the income for her maintenance and personal wants. Civ. C. 1530, 1536, 1549.

Art. 1535. The real estate forming part of the dowry in the case mentioned in this subdivision is not inalienable.

Nevertheless, it cannot be conveyed without the husband's consent, and in case of his refusal, without the approval of the Court. Civ. C. 217 et seq., 1417, 1426, 1554 et seq., 1557.

§ II. *Of the Clause of Separation of Property.*

Art. 1536. When the husband and wife have stipulated in their marriage contract that there shall be a separation of property between them, the wife retains the entire management of her personal property and real estate and the free enjoyment of her income. Civ. C. 217, 219, 1449 et seq., 1537 et seq., 1576.

Art. 1537. Each of the parties contributes to the household expenses according to the conditions contained in their contract; and if none have been made, the wife contributes to such expenses to the extent of one-third of her income. Civ. C. 203, 214, 1134, 1448, 1549, 1575.

Art. 1538. The wife cannot in any case, nor in consequence of any agreement, convey her real estate without the express consent of her husband, or in case of his refusal, without being authorized by the Court.

Any general consent given to the wife to convey her real estate either in the marriage contract or since then, is void. Civ. C. 6, 217 et seq., 223, 1133, 1172, 1388, 1449 et seq., 1576.

Art. 1539. When a wife separated as to property has left the enjoyment of her property to her husband, the latter is only bound either in case of a demand made upon him on the part of his wife, or at the dissolution of the marriage, to produce the income which exists, and he is not accountable for the income which has been previously spent. Civ. C. 1577 et seq.

Chapter III.

Of Dotal System.

Art. 1540. Dowry under this system, as well as under the one specified in chapter II, is the property which the wife brings to the husband to defray the household expenses. Civ. C. 1391 et seq., 1438 et seq., 1502, 1530 et seq., 1541 et seq.

Art. 1541. Everything the wife settles upon herself, or which is given to her by marriage contract, is dotal unless there is an agreement to the contrary. Civ. C. 1081 et seq., 1392, 1542 et seq., 1574 et seq.

SECTION I.

OF SETTLEMENT OF DOWRY.

Art. 1542. A settlement of dowry may include all the present and future property of the wife, or all her present property only, or a part of her present and future property, or even an individual thing.

A settlement in general terms of all the wife's property does not include future property. Civ. C. 1162, 1541, 1574.

Art. 1543. Dowry cannot be settled, or increased, during the marriage. Civ. C. 1394 et seq.

Art. 1544. If the father and mother make jointly a settlement of dowry without specifying each one's share, such settlement shall be considered to have been made by equal portions.

If a settlement of dowry has been made by the father alone, out of property of the father and mother, the mother is not liable, even if she was present at the execution of the contract, and the father shall be liable for the entire dowry. Civ. C. 203 et seq., 1438 et seq., 1555 et seq.

Art. 1545. If the survivor of the father and mother has made a settlement of dowry out of property of such father and mother without specifying the portions, the dowry shall first be taken out of the rights of the future husband or wife to the property of the deceased father or mother, and the balance out of the property of the one who has made the settlement. Civ. C. 1438 et seq., 1546.

Art. 1546. Although a daughter endowed by her father and mother has property of her own of which

they have the enjoyment, the dowry shall be taken out of their property, unless there is an agreement to the contrary. Civ. C. 384, 476, 1023, 1134.

Art. 1547. Those who make a settlement of dowry are obliged to warrant the property settled. Civ.C. 1440, 1625 et seq.

Art. 1548. The interest on the dowry begins to run as a matter of right against those who have promised it, from the day of the marriage, even if time has been allowed for its payment, unless there is an agreement to the contrary. Civ. C. 1154, 1186, 1440, 1570, 1907 et seq.

Section II.

Of the Rights of the Husband to the Dotal Property and of Inalienability of the Capital.

Art. 1549. The husband has the sole management of the dotal property during the marriage.

He alone has the right to proceed against debtors and holders of such property, to collect the revenue and interest, and to receive the repayment of the capital.

However, it may be agreed in the marriage contract that the wife shall receive annually, upon her own acquittance, a part of her income, for her maintenance and her personal wants. Civ. C. 818, 1421, 1428, 1531 et seq., 1558 et seq., 2121, 2135.

Art. 1550. The husband is not bound to give security upon payment of the dowry, unless he is compelled to do so by the marriage contract. Civ. C. 601, 1562, 2011.

Art. 1551. If the dowry or a part of it consists of

personal articles estimated in the marriage contract, without a declaration that the appraisal does not constitute a sale, the husband becomes the owner thereof and only owes the value given to the personal property. Civ. C. 1527 et seq., 1552, 1564 et seq.

Art. 1552. The appraisal of real estate forming part of the dowry does not transfer the ownership to the husband, unless there is an express declaration to that effect. Civ. C. 1551, 1564, 1630.

Art. 1553. The real estate purchased with dotal funds does not become dotal property unless a condition has been inserted in the marriage contract allowing the dowry to be so invested.

The same rule applies to real estate given in payment of a dowry settled in money. Civ. C. 1435, 1558 et seq., 1595-3°.

Art. 1554. Real estate settled as dowry cannot be conveyed or mortgaged during the marriage, either by the husband or wife, or by both of them jointly, excepting as follows. Civ. C. 1421, 1428, 1535, 1538, 1555 et seq., 1560 et seq., 1572, 1576, 2121.

Art. 1555. The wife may, with the consent of her husband, or in case of his refusal with the approval of the Court, give her dotal property for the establishment of children whom she might have of a previous marriage; but if she is only authorized by the Court, she must reserve the enjoyment of such property to her husband. Civ. C. 203 et seq., 217 et seq., 578 et seq., 1427, 1438 et seq., 1544 et seq., 1556.

Art. 1556. She may also, with the consent of her

husband, give her dotal property for the establishment of the children of the marriage.

(Law of March 19, 1919). When the wife is more than forty-five years of age and there is no living issue of the marriage, she may with the consent of her husband and of the Court give her dotal property for public or private works of charity and benevolence or for works more particularly intended to encourage child birth, for the protection of childhood and for war orphans. Should the husband refuse his consent, the Court's consent is sufficient to allow the wife to act, but in that case the husband retains the enjoyment of the property thus given. Civ. C. 217, 1427, 1544 et seq.

Art. 1557. Dotal real estate may be conveyed when the marriage contract allows the conveyance thereof. Civ. C. 1134, 1387, 1552, 1554.

Art. 1558. Dotal real estate may also be conveyed by order of the Court and at auction after three notices :

To get the husband or wife out of prison :

To furnish support to the family in the cases provided by articles 203, 205, and 206 of the title *Of Mariages :*

To pay the wife's debts or those of the persons who have given the dowry, when such debts have a positive date which is previous to the marriage contract :

To make important repairs which are indispensable for the preservation of the dotal real estate :

Finally, when such real estate is undivided, and owned together with third parties, and it is apparent that it cannot be divided.

In all these cases any surplus remaining of the selling price in excess of the acknowledged wants shall remain dotal property and shall be invested as such for the benefit of the wife. Civ. C. 606, 815, 827, 1317, 1328, 1387, 1427, 1552, 1554, 1562, 1595, 1686.

Art. 1559. Dotal real estate can be exchanged with the wife's consent, for other real estate of the same value, to the extent of four-fifths at least, if the advantage of the exchange is shown and when the consent of the Court has been obtained based upon an estimate of experts which it has appointed of its own accord.

In such case the real estate received in exchange shall be dotal : the surplus above the price, if there is any, shall also be dotal and shall be invested as such for the benefit of the wife. Civ. C. 219, 1702 et seq.

Art. 1560. If, outside of the exceptional cases which have just been explained, the wife or husband, or both of them jointly, convey the dotal property, the wife or her heirs may have the conveyance set aside after the dissolution of the marriage, and prescription cannot be set up against them during its continuance : the wife shall have the same right after a separation of property.

The husband himself may have the conveyance set aside during the marriage by remaining nevertheless liable for damages to the purchaser, if he has not declared in the deed that the property sold was dotal. Civ. C. 225, 1125, 1149, 1304, 1312, 1338, 1549, 1554 et seq., 1561, 1599, 2059, 2255 et seq.

Art. 1561. Prescription does not run during the

marriage against dotal real estate which has not been declared to be alienable in the marriage contract, unless the prescription had commenced to run previously thereto.

Nevertheless, prescription can run after a separation of property, whatever may be the time when the prescription has commenced. Civ. C. 311, 1441, 1443 et seq., 1554, 1560, 1562 et seq., 2255 et seq.

Art. 1562. A husband, with respect to dotal property, is subject to all the obligations of a usufructuary.

He is liable for all prescriptions which have taken effect and for deteriorations resulting from his negligence. Civ. C. 600 et seq. 614, 1382 et seq., 1533, 1550, 1567 et seq., 1580, 1732.

Art. 1563. If the dowry is jeopardized, the wife can apply for a separation of property, as is stated in articles 1443 and the following. Civ. C. 1443 et seq.

Section III.

Of Restitution of Dowry.

Art. 1564. If the dowry consists of real estate;

Or of personal property not appraised in the marriage contract or appraised with a declaration that the appraisal does not deprive the wife of the ownership;

The husband or his heirs may be compelled to return it at once, after the dissolution of the marriage. Civ. C. 227, 1551 et seq., 1565 et seq.

Art. 1565. If it consists of a sum of money;

Or of personal property appraised in the marriage contract without a declaration that the appraisal does not confer ownership upon the husband;

The restitution can only be claimed one year after the dissolution. Civ. C. 227, 1532, 1551 et seq., 1570.

Art. 1566. If the personal property of which the wife retains the ownership has been destroyed by use and not owing to the fault of the husband, he shall only be bound to return the things that remain and in the condition in which they are.

Nevertheless, the wife may, in all cases, take back her linen and clothes for her present use, but the value thereof shall be deducted, if such linen and clothes had been appraised when originally given. Civ. C. 589, 1382 et seq., 1492, 1495, 1551.

Art. 1567. If the dowry comprises obligations or settlements of annuities which have been extinguished or have decreased in value, not owing to any negligence for which the husband is to blame, he shall not be liable and he shall be released upon returning the contracts. Civ. C. 530, 588, 1383, 1562, 1909 et seq.

Art. 1568. If the dowry comprises the settlement of a usufruct, the husband or his heirs, upon the dissolution of the marriage, are only obliged to return the right to the usufruct and not the income accrued during the marriage. Civ. C. 562, 578, 586, 588.

Art. 1569. If the marriage has lasted ten years since the time fixed for the payment of the dowry has expired, the wife or her heirs may claim such dowry from the husband after the dissolution of the marriage, without being bound to prove that he has received it, unless he shows that he has taken steps

to obtain the payment thereof without result. Civ. C. 1350, 1352, 1502, 1567.

Art. 1570. If the marriage is dissolved by the death of the wife, the interest and the revenue of the dowry which is to be returned begin to run as a matter of right for the benefit of her heirs from the day of the dissolution.

If it is by the death of the husband, the wife has the choice between claiming the interest on the dowry during the year of her mourning or claiming alimony during such time, at the expense of the husband's succession; but in both cases lodging and the wearing apparel of her mourning shall be supplied to her by the succession during that year, without deduction from the interest which she is entitled to. Civ. C. 1153 et seq., 1440, 1465 et seq., 1481, 1495, 1548, 1566, 1907.

Art. 1571. At the dissolution of the marriage the revenue of the dotal real estate is divided between the husband and the wife or their heirs in proportion to the time it has run, during the last year.

The year commences from the day upon which the marriage has been celebrated. Civ. C. 227, 585 et seq., 1401-2°, 1474.

Art. 1572. The wife and her heirs have no priority rights over mortgage creditors of prior date for the restitution of the dowry. Civ. C. 954, 958, 963, 1054, 2095, 2114, 2121, 2134 et seq.

Art. 1573. If the husband was already insolvent and had no trade or profession when the father settled a dowry upon his daughter, the latter is only bound to return to her father's succession the right of

action which she has against the succession of her husband for repayment.

But if the husband has only become insolvent since the marriage,

Or if he had a trade or profession which took the place of capital,

The loss of the dowry falls solely upon the wife. Civ. C. 843 et seq., 855, 1302 et seq., 1563, 1567.

Section IV.

Of Paraphernal Property.

Art. 1574. All the property of the wife which has not been settled as dowry is paraphernal. Civ. C. 1536 et seq., 1540 et seq., 2066.

Art. 1575. If all the wife's property is paraphernal and if there are no conditions in the contract obliging her to assume a part of the household expenses, she contributes thereto to the extent of one-third of her income. Civ. C. 203 et seq. 1448, 1530, 1537.

Art. 1576. The wife has the management and enjoyment of her paraphernal property.

But she cannot convey the same or appear in Court in connection therewith, without the consent of her husband, or upon his refusal without the approval of the Court. Civ. C. 215 et seq., 1536, 1538, 1555 et seq.

Art. 1577. If the wife gives her power of attorney to the husband to manage her paraphernal property with the obligation to account to her for the revenue, he shall be liable to her, in the same manner as any attorney-in-fact. Civ. C. 1984, 1991, et seq., 1993 et seq.

Art. 1578. If the husband has had the enjoyment of the paraphernal property of his wife without a power of attorney and nevertheless without opposition on her part, he is only bound, upon the dissolution of the marriage, or upon the first demand of the wife, to produce the existing revenue, and he is not accountable for the revenue which has been consumed up to that time. Civ. C. 578, 1539, 1579 et seq.

Art. 1579. If the husband has had the enjoyment of the paraphernal property in spite of manifest opposition on the part of the wife, he is answerable to her for the entire revenue both existing and consumed. Civ. C. 1578.

Art. 1580. The husband who has had the enjoyment of paraphernal property is subject to all the obligations of a usufructuary. Civ. C. 600 et seq., 1533, 1562.

Special Provision.

Art. 1581. Although assuming the dotal system the husband and wife may nevertheless agree that there shall be an association as to acquests, and the effects of such association shall be regulated as is stated in articles 1498 and 1499. Civ. C. 1387, 1497.

TITLE SIXTH.

Of Sales.

(Passed March 6, 1804; promulgated 16th of same month.)

Chapter I.

Of the Nature and Form of Sales.

Art. 1582. A sale is an agreement by which one person binds himself to deliver a thing and another to pay for it.

It can be made by a public instrument or by an instrument under private signature. Civ. C. 1317 et seq., 1322, 1354 et seq.

Art. 1583. A sale is complete between the parties and the ownership passes as a matter of right to the purchaser from the vendor as soon as the thing and the price have been agreed upon, although the thing has not yet been delivered or the price paid. Civ. C. 711, 1108 et seq., 1138, 1585 et seq.

Art. 1584. A sale can be made out and out or subject to a condition which may suspend or annul it.

It can also apply to two or more things, in the alternative.

In all cases its effect is regulated by the general principles relating to contracts. Civ. C. 1168 et seq., 1181 et seq., 1221.

Art. 1585. When goods are not sold in bulk but by weight, number or measure, the sale is not complete in this respect that the goods sold remain at the risk of the vendor until they have been weighed, counted

or measured; but the purchaser may claim the delivery thereof, or damages, if there is cause therefor, in case the contract is not carried out. Civ. C. 1136 et seq., 1142 et seq., 1147 et seq., 1182, 1586 et seq., 1610 et seq.

Art. 1586. If, on the contrary, the goods have been sold in bulk, the sale is complete although the goods have not yet been weighed, counted or measured. Civ. C. 1585, 1587.

Art. 1587. As regards wine, oil and other goods which it is customary to taste before buying, there is no sale so long as the purchaser has not tasted and accepted them. Civ. C. 1585 et seq.

Art. 1588. A sale made upon trial is always supposed to be made under a suspensive condition. Civ. C. 1181 et seq., 1584.

Art. 1589. A promise of sale is equivalent to a sale when there is mutual consent of both parties as to the thing and the price. Civ. C. 1583, 1590 et seq.

Art. 1590. If a promise of sale has been made with payment of earnest money, each of the contracting parties is at liberty to withdraw,

The one who has given the earnest money, by losing it,

And the one who has received it, by returning twice the amount. Civ. C. 1589, 1715.

Art. 1591. The price of the sale must be fixed and stated by the parties. Civ. C. 1129, 1592.

Art. 1592. It can, nevertheless, be left to the arbitration of a third person : if such person is unwilling or unable to make an estimate, there is no sale. Civ. C. 1854.

Art. 1593. The expense for drawing the contract and the other charges relating to the sale shall be paid by the purchaser. Civ. C. 1248, 1608, 1630-3°-4°, 1646.

Chapter II.

Of Those who may buy or sell.

Art. 1594. All those not forbidden to do so by law can buy or sell. Civ. C. 128, 450, 537, 1123 et seq., 1507 et seq., 1554 et seq., 1576, 1595 et seq., 1860.

Art. 1595. A contract of sale can only take place between husband and wife in the three following cases :

1° In case either the husband or the wife, when judicially separated as to property, assigns to the other some property in payment of his or her rights;

2° When the asignment made by the husband to the wife even when not separated as to property, has a legitimate cause, such as the reinvestment of proceeds of her real estate sold, or of funds belonging to her, if such real estate or funds do not form part of the community;

3° When the wife assigns property to her husband in payment of an amount which she has promised to give him as dowry and when there is no community.

Subject in these three cases to the rights of the heirs of the contracting parties, if indirect advantages have been given. Civ. C. 913 et seq., 1094 et seq., 1098 et seq., 1433 et seq., 1441, 1443 et seq., 1496, 1527.

Art. 1596. The following persons cannot, either

personally or through intermediaries, become purchasers, under penalty of avoidance of the sale;

Guardians, with respect to the property of those under their guardianship;

Attorneys-in-fact, with respect to property which they have charge of selling;

Administrators, with respect to property belonging to districts or public establishments intrusted to their care;

Public officials, with respect to national property of which the sale is conducted through their instrumentality. Civ. C. 450, 911, 1991 et seq.

Art. 1597. Judges, their assistants, magistrates acting as Public Prosecutors, clerks of the Court, bailiffs, solicitors, counsellors and notaries cannot purchase the actions, contested rights and causes of action which come under the jurisdiction of the Tribunal in the district before which they practice, under penalty of avoidance of the sale and of costs and damages. Civ. C. 1699.

Chapter III.

Of Things which can be Sold

Art. 1598. Everything which is in trade (1) can be sold when special laws do not prohibit the sale thereof. Civ. C. 538, 540, 544, 1128, 1554, 1600, 2226.

Art. 1599. The sale of a thing belonging to another person is void: it can give rise to damages when the purchaser is not aware that the thing belonged

(1) These words must be taken in a broad sense and apply to property belonging to private individuals in contradiction to public property.

to another person. Civ. C. 1021, 1141, 1304, 1603, 1635, 1653, 1704, 2265 et seq.

Art. 1600. The succession of a person who is alive cannot be sold, even with his consent. Civ. C. 791, 1130, 1389.

Art. 1601. If, at the time of the sale, the thing sold had been totally destroyed, the sale shall be void.

If only a part of the thing has been destroyed, the purchaser has the choice between rescinding the purchase or claiming the part saved by having the price fixed by appraisal. Civ. C. 1193 et seq., 1302 et seq., 1636.

Chapter IV.

Of the Vendor's Obligations.

Section I.

General Provisions.

Art. 1602. The vendor is obliged to explain distinctly what he binds himself to.

Any obscure or ambiguous contract shall be interpreted against the vendor. Civ. C. 1156 et seq., 1162 et seq., 1190.

Art. 1603. He has two principal obligations, one to make delivery, and the other to warrant the thing sold. Civ. C. 1136 et seq., 1604 et seq., 1625 et seq.

Section II.

Of Delivery.

Art. 1604. Delivery is the transfer of the thing sold into the power and possession of the purchaser. Civ. C. 1136 et seq. 1582 et seq., 1605 et seq.

Art. 1605. The obligation to deliver real estate is fulfilled on the part of the vendor when he has handed over the keys in case of a building, or when he has handed over the title deeds. Civ. C. 1606 et seq.

Art. 1606. The delivery of personal property takes places :

Either by actual transfer,

Or by handing over the keys of the buildings in which it is contained,

Or even by the mere consent of the parties, if the transfer cannot take place at the time of the sale, or if the purchaser already had the property in his possession in another manner. Civ. C. 727 et seq., 1138 et seq.

Art. 1607. The transfer of incorporeal rights is made either by handing over the title deeds or by the use which the purchaser makes of such rights with the consent of the vendor. Civ. C. 1689 et seq., 2075.

Art. 1608. The expenses of delivery are paid by the vendor and those of removal by the purchaser, unless there is a stipulation to the contrary. Civ. C. 1248.

Art. 1609. Delivery must be made at the place where the thing sold was at the time of the sale, unless otherwise agreed upon. Civ. C. 1247, 1264, 1651.

Art. 1610. If the vendor fails to make delivery at the time agreed upon between the parties, the purchaser has the choice of either applying for the cancellation of the sale or asking to be given possession, if the delay has been caused solely by the vendor. Civ. C. 1142, 1184, 1621, 1654 et seq.

Art. 1611. In all cases the Court must order the vendor to pay damages if the purchaser has suffered a loss, because the delivery was not made at the time agreed upon. Civ. C. 1142, 1146 et seq., 1184, 1610.

Art. 1612. A vendor is not obliged to deliver the thing if the purchaser does not pay the price thereof, unless the vendor has given him time to pay. Civ. C. 1186, 1650 et seq., 2102-4°.

Art. 1613. Neither shall he be obliged to make delivery, even if he has allowed him time to pay, if, since the sale, the purchaser has become a bankrupt or is in a state of insolvency, so that the vendor finds himself in imminent danger of losing his money, unless the purchaser furnishes security to pay at the time agreed upon. Civ. C. 1188, 1653, 2011 et seq.

Art. 1614. The thing must be delivered in the state in which it was at the time of the sale.

From that day the entire revenue belongs to the purchaser. Civ. C. 547 et seq., 583 et seq., 604, 1137 et seq., 1182, 1583, 1682.

Art. 1615. The obligation to deliver the thing includes its accessories and everything that was intended for its perpetual use. Civ. C. 522 et seq., 546 et seq., 551 et seq., 1018 et seq., 1692.

Art. 1616. A vendor is obliged to deliver the quantity as it is specified in the contract, subject to the modifications hereinafter expressed. Civ. C. 1617 et seq., 1765.

Art. 1617. If the sale of real estate has been made and the dimensions have been specified at so much according to measure, the vendor is obliged to

deliver to the purchaser the quantity stated in the contract, if the latter requires it.

And if this cannot be done or if the buyer does not require it, the vendor is obliged to accept a proportionate reduction of price. Civ. 1134, 1618, 1622, 1644, 1765.

Art. 1618. If, on the contrary, in the case mentioned in the foregoing article, the area is greater than is expressed in the contract, the purchaser has the choice between paying the surplus of the price or rescinding the contract, if the surplus exceeds by one-twentieth the area specified. Civ. C. 1622, 1681 et seq.

Art. 1619. In all other cases,

Whether the sale is made of a specified and limited corpus,

Whether it applies to distinct and separate pieces of property,

Whether it commences by the measure or by the designation of the property sold followed by the measure.

The designation of the measure does not entitle the vendor to any increase of price for what exceeds the measure, nor the purchaser to any reduction of price for what is below it, unless the difference in the actual measure and in the one expressed in the contract is of one-twentieth more or less with respect to the value of all the property sold, provided there is no stipulation to the contrary. Civ. C. 1245, 1617 et seq., 1623.

Art. 1620. In case it should be necessary in accordance with the foregoing article to increase the price on account of what exceeds the measure, the

purchaser may select either to rescind the contract or to pay the additional price, with interest, if he has kept the real estate. Civ. C. 1618, 1652, 1681, et seq.

Art. 1621. In all cases in which the purchaser has the right to rescind the contract, the vendor is obliged to return to him the cost of the contract, besides the price, if he has received it. Civ. C. 1608, 1618 et seq., 1630.

Art. 1622. The action for an increase of price on the part of the vendor and the action for a reduction of price or for cancellation of the contract, on the part of the purchaser, must be brought within one year from the date of the contract, otherwise it is barred. Civ. C. 1617 et seq.

Art. 1623. If two pieces of property have been sold by the same contract and for a single and same price, of which the measure and dimensions of each one has been specified, and one of such pieces of property should be of smaller and the other of larger dimensions, proper compensation shall be made to the extent of the difference; and an action for an increase or reduction of price is only maintainable in accordance with the rules hereabove set forth. Civ. C. 1289 et seq., 1617 et seq.

Art. 1624. The question of ascertaining whether the loss or depreciation of the property sold before its delivery shall fall upon the vendor or the purchaser, shall be decided according to the rules laid down in the title *Of Contracts or Conventional Obligations in General.* Civ. C. 1137 et seq., 1148, 1182, 1185, 1302 et seq., 1647.

Section III.

Of Warranty.

Art. 1625. The warranty which the vendor owes to the purchaser has a double object : first, the peaceful possession of the property sold; second, the hidden defects of such property or the defects rendering the sale void. Civ. C. 1603, 1626 et seq., 1641 et seq.

§ I. *Of Warranty in case of Ejectment.*

Art. 1626. Although no stipulation as to warranty has been made upon the sale of property, the vendor is in duty bound to warrant the purchaser against an ejectment which he may be subjected to from the whole or part of the property sold, or against the alleged encumbrances upon such property, not declared at the time of the sale. Civ. C. 884 et seq., 1599, 1681, 1705, 1845, 2178, 2191 et seq.

Art. 1627. The parties may, by special agreement, add to this legal obligation or reduce its effect : they may even agree that the vendor shall not be subject to any warranty. Civ. C. 1134, 1643, 1628 et seq., 1693.

Art. 1628. Even if it is stated that the vendor is not to be subject to any warranty, he nevertheless remains liable to warranty against his personal act : any agreement to the contrary is void. Civ. C. 6, 1382 et seq., 1622, 1693.

Art. 1629. Even in case of a stipulation of no warranty, the vendor is bound in case of ejectment to return the price, unless the purchaser knew at the time of the sale of the danger of being ejected or unless

he made the purchase at his own risk and peril. Civ. C. 1138, 1599, 1642, 1693.

Art. 1630. When a warranty has been promised or when no stipulation has been made with respect thereto, the purchaser, when he is ejected, has the right to claim from the vendor.

1° The return of the price,

2° The return of the revenue when he is obliged to give it back to the owner who ejects him,

3° The expenses incurred in the action for warranty brought by the purchaser and those incurred by the original plaintiff,

4° Finally, the damages and interest together with the expenses and proper costs of the contract. Civ. C. 549 et seq., 1149 et seq., 1582 et seq., 1593, 1614, 1621, 1646, 1652, 1673, 1682, 1699, 2188.

Art. 1631. When, at the time of the ejectment, the property sold has decreased in value or has been considerably damaged, either owing to the negligence of the purchaser or by accidents resulting from superior force, the vendor nevertheless is bound to return the entire price. Civ. C. 1382 et seq., 1632, 2175.

Art. 1632. But if the purchaser has derived some profit from the damage occasioned by him, the vendor has the right to deduct from the price a sum equal to such profit. Civ. C. 2175.

Art. 1633. If the property sold has increased in price at the time of the ejectment, even independently of what the purchaser may have done to it, the vendor is obliged to pay him what it is worth above the price of the sale. Civ. C. 1150, 1637, 2175.

Art. 1634. A vendor is bound to repay to the purchaser or to cause to be repaid to him by the per-

son who ejects him all the useful repairs and improvements which he has made on the property. Civ. C. 599, 861 et seq., 867, 1437, 2175.

Art. 1635. If the vendor has sold the property of another person in bad faith, he is obliged to pay to the purchaser all the expenses, even for adornment or pleasure, which the latter may have made on the property. Civ. C. 549 et seq., 1119 et seq., 1599 et seq., 1645, 1935, 2236 et seq., 2268.

Art. 1636. If the purchaser is only ejected from part of the property and such part is of so much importance in proportion to the whole that the purchaser would not have bought it without the part from which he has been ejected, he may have the sale rescinded. Civ. C. 1142, 1637 et seq.

Art. 1637. If, in case of ejectment from part of the property sold, the sale is not rescinded, the value of the part from which the purchaser is ejected shall be reimbursed to him, according to an appraisal made at the time of the ejectment and not proportionately to the total price of the sale, whether the property sold has increased or decreased in value. Civ. C. 1617, 1633, 1638.

Art. 1638. If the estate sold is encumbered with servitudes which are not apparent, without any declaration to that effect having been made, and such servitudes are of so much importance that it is to be presumed that the purchaser would not have bought the property if he had known of them, he may demand the cancellation of the contract, unless he prefers to be satisfied with an indemnity. Civ. C. 637, 689, et seq., 1641 et seq.

Art. 1639. The other questions which may entitle

the purchaser to damages owing to failure to carry out the sale, must be decided according to the general rules laid down in the title *Of Contracts or Conventional Obligations in General.* Civ. C. 1134, 1136 et seq., 1142 et seq., 1146 et seq., 1156 et seq., 1182 et seq., 1184, 1226 et seq.

Art. 1640. A warranty against ejectment ceases when the purchaser has allowed a final judgment to be given against him or a judgment from which an appeal can no longer be taken without summoning the vendor, if the latter proves that a sufficient defence existed to have the action dismissed. Civ. C. 1351.

§ II. *Of Warranty against the Defects of the Thing sold.*

Art. 1641. A vendor is bound to warrant against the hidden defects of the thing sold which render it unfit for the use for which it was intended, or which impair its use to such an extent that the purchaser would not have acquired it, or would only have given a smaller price if he had known of them. Civ. C. 1110, 1625, 1638 et seq., 1642 et seq., 1891.

Art. 1642. A vendor is not responsible for the apparent defects which the purchaser has been able to ascertain for himself. Civ. C. 1629, 1644.

Art. 1643. He is responsible for the hidden defects, even if he did not know of them, unless it has been stipulated that he would not be bound to any warranty in such case. Civ. C. 1627 et seq., 1644 et seq.

Art. 1644. In the cases specified in articles 1641 and 1643 the purchaser may elect either to return

the thing and have the price repaid to him or to keep the thing and have such part of the price repaid as shall be decided by experts. Civ. C. 1617, 1638.

Art. 1645. If the vendor knew of the defects of the thing, he is bound not only to return the price which he has received, but he is also liable to the purchaser for all damages. Civ. C. 1149, 1151, 1382, 1630 et seq., 1635, 1891.

Art. 1646. If the vendor was ignorant of the defects of the thing, he shall only be bound to return the price and to reimburse to the purchaser the expenses occasioned by the sale. Civ. C. 1150, 1593, 1630.

Art. 1647. If the thing which had defects perishes owing to its bad condition, the loss falls upon the vendor and he is bound towards the purchaser to return the price and to make the other amends specified in the two foregoing articles.

But if the loss happens by accident, it falls upon the purchaser. Civ. C. 1148 et seq., 1302 et seq., 1631.

Art. 1648. The action resulting from defects which render the sale void must be brought by the purchaser within a short time, according to the nature of such defects and the customs of the place where the sale was made. Civ. C. 1159.

Art. 1649. It cannot be maintained in case of sales made by order of the Court. Civ. C. 1684.

Chapter V.

Of the Purchaser's Obligations.

Art. 1650. The principal obligation of the purchaser is to pay the price upon the day and at the place fixed by the sale. Civ. C. 1235 et seq., 1247, 1582 et seq., 1591 et seq., 1612 et seq., 1651 et seq., 2102-4°, 2103-1°.

Art. 1651. If nothing has been arranged in that respect at the time of the sale, the purchaser must pay at the time and at the place where the delivery is to take place. Civ. C. 1247, 1264, 1609, 1612.

Art. 1652. The purchaser owes interest on the purchase price up to the time of the payment of the capital in the three following cases:

If it has been so agreed at the time of the sale;

If the thing sold and delivered bears fruit or produces any other revenue;

If the purchaser has been summoned to pay.

In the last case the interest only runs from the time of the summons (1). Civ. C. 520, 583 et seq., 1139, 1153, 1614, 1682, 1905, 1907.

Art. 1653. If the purchaser is threatened or has a just cause for fearing that he will be troubled by an action upon a mortgage or for recovery, he may suspend the payment of the price until the vendor has caused the trouble to cease, unless the latter prefers to give security or unless it has been stipulated that

(1) A summons here means a legal demand made by a bailiff.

the purchaser will pay notwithstanding the disturbance. Civ. C. 1612 et seq., 1704, 1725 et seq., 2040.

Art. 1654. If the purchaser does not pay the price, the vendor may ask for the cancellation of the sale. Civ. C. 1184, 1234, 1610, 1655 et seq., 1978, 2102-4°, 2103-1°.

Art. 1655. The cancellation of a sale of real estate shall be forthwith ordered by the Court, if the vendor is in danger of losing the property and the price.

If such danger does not exist, the Judge may grant the purchaser more or less time, according to circumstances.

When the time has passed and the purchaser has not paid, the cancellation of the sale shall be ordered. Civ. C. 1244, 1656.

Art. 1656. If it has been stipulated upon the sale of real estate that in default of payment of the price at the time agreed upon, the sale shall be cancelled as a matter of right, the purchaser can nevertheless pay after the time has expired, so long as a demand has not been made upon him by way of a summons (1): but after service of the summons, the Judge cannot grant him any more time. Civ. C. 1139, 1184, 1655.

Art. 1657. In case of sale of goods and personal effects, the cancellation of the sale shall take place as a matter of right for the benefit of the vendor, and without a summons (1) after the expiration of the time agreed upon for the removal of the thing. Civ. C. 1184, 1585 et seq., 1905, 2102-4°.

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(1) A summons here means a legal demand made by a bailiff.

Chapter VI.

Of Avoidance and Rescission of Sales.

Art. 1658. Independently of the causes of avoidance and rescission above explained in this title or of those which apply to all contracts, a contract of sale can be rescinded by means of a power of redemption and on account of insufficiency of the price. Civ. C. 1183 et seq., 1234, 1304 et seq., 1610, 1618 et seq., 1626, 1644 et seq., 1654 et seq., 1674 et seq.

Section I.

Of Right of Redemption.

Art. 1659. The right of redemption or repurchase is an agreement by which the vendor retains the power of taking back the thing sold, by returning the purchase price and reimbursing what is specified in article 1673. Civ. C. 1582, 1660 et seq., 1751, 2085, et seq.

Art. 1660. The right of redemption cannot be stipulated for a period exceeding five years.

If it has been stipulated for a longer time, it is reduced to that period. Civ. C. 6, 1662.

Art. 1661. The time fixed is imperative and cannot be extended by the Court. Civ. C. 1655 et seq.

Art. 1662. If the vendor has not brought his action for redemption within the time fixed, the purchaser remains the irrevocable owner. Civ. C. 1751, 2088.

Art. 1663. The time runs against all persons, even against a minor, subject to the remedy against

whomsoever is concerned, if there is occasion therefor. Civ. C. 1304, 1676, 2252, 2278.

Art. 1664. The vendor holding a covenant of redemption may bring his action against a second purchaser, even if the power of redemption is not mentioned in the second contract. Civ. C. 1165, 1183, 1599.

Art. 1665. The purchaser subject to a covenant of redemption may exercise all the rights of his vendor : he takes advantage of prescription as well against the real owner as against those who might claim to have rights or mortgages over the thing sold. Civ. C. 1583, 1659, 1673, 1751, 2229, 2235, 2262 et seq., 2265 et seq.

Art. 1666. He can oppose the benefit of seizure (1) against the creditors of the vendor. Civ. C. 1166, 2021 et seq., 2170 et seq.

Art. 1667. If the purchaser of the undivided part of an estate subject to a power of redemption has bought the whole estate at a partition sale ordered by the Court against him, he may compel the vendor to take back the whole property, if the latter wishes to make use of the covenant. Civ. C. 1686 et seq.

Art. 1668. If several persons have sold jointly and by a single contract a joint estate, each one can only bring his action for redemption for his share. Civ. C. 815, 1217 et seq., 1667, 1670 et seq.

Art. 1669. The same rule shall apply if the person who alone has sold an estate has left several heirs.

Each of the co-heirs can only make use of the

(1) See article 2021.

power of redemption for the part which he takes in the succession. Civ. C. 724, 870, 1220 et seq., 1670 et seq., 1685.

Art. 1670. But in the cases specified in the two foregoing articles, a purchaser can insist that all the vendors or all the co-heirs be made parties to the action, so that they may agree between themselves as to the redemption of the whole estate; and if they do not agree his action shall be dismissed . Civ. C. 1225, 1671.

Art. 1671. If the sale of an estate belonging to several persons has not been made jointly and the whole estate has not been sold together, and if each one has only sold his share, they can bring their action for redemption separately for the part which belonged to them;

And the purchaser cannot compel the person who brings the action in this way to redeem the whole. Civ. C. 1667 et seq.

Art. 1672. If the purchaser has left several heirs, the action for redemption can only be brought against each one of them for his share, if it is still undivided, and if the property sold has been divided between them.

But if there has been a division of the estate and the property sold has fallen to the share of one of the heirs, the action for redemption may be brought against him for the whole. Civ. C. 883 et seq., 1220 et seq., 1669, 1685.

Art. 1673. The vendor who makes use of a power of redemption must reimburse not only the purchase price but also the expenses and proper charges of the sale, the necessary repairs and those which have

increased the value of the property to the extent of such value. He can only enter into possession after having satisfied all these obligations.

When the vendor regains his estate owing to the power of redemption, he takes it free of all charges and mortgages with which the purchaser may have encumbered it : he is bound to carry out the leases made in good faith by the purchaser. Civ. C. 865, 952, 963, 1183 et seq., 1429, 1630-4°, 1659, 1751, 2125.

Section II.

Of Rescission of Sales on account of Inadequacy.

Art. 1674. If the vendor has suffered a loss of more than seven-twelfths of the price of a piece of real estate, he has the right to apply for the rescission of the sale, even if he has expressly renounced in the contract the right to ask for such rescission and though he has declared that he forfeits any increase in value. Civ. C. 6, 887 et seq., 1079, 1118, 1234 et seq., 1304 et seq., 1313, 1658, 1675 et seq., 1684, 1706.

Art. 1675. To ascertain if there is a loss of the seven-twelfths, the real estate must be appraised according to its condition and value at the time of the sale. Civ. C. 890.

Art. 1676. No action can be brought after the expiration of two years from the day of the sale.

The time runs against married women, absentees, interdicted persons and minors taking the place of a person of full age who has made the sale.

The time also runs and is not suspended during the period stipulated for the power of redemption. Civ. C 1304, 1306 et seq., 1314, 1659 et seq., 2252 et seq.

Art. 1677. Proof of inadequacy can only be made by judgment and only in case the facts alleged are sufficiently probable and serious to create a presumption of inadequacy.

Art. 1678. Such proof can only be admitted upon a report of three experts, who are obliged to make a single joint official report and to express a single opinion by a plurality of votes. Civ. C. 1679 et seq.

Art. 1679. If there are different opinions, the official report shall state the reasons given, but it shall not be allowed to make known what was the opinion of each expert.

Art. 1680. The three experts shall be appointed by the Court, unless the parties have agreed to name them all three jointly.

Art. 1681. In case the action for rescission is successful the purchaser has the choice between returning the thing and taking back the price which he has paid, or keeping the property by paying the balance of the just price, after deducting one-tenth of the total price.

A third party in possession has the same right, subject to his claim for warranty against the vendor. Civ. C. 891, 1601, 1617 et seq., 1621, 1630 et seq., 1682.

Art. 1682. If the purchaser prefers to keep the property by paying the balance, as specified in the foregoing article, he owes interest on such balance from the day the action for rescission was commenced.

If he prefers to return it and to take back the price, he must return the income from the day the action was brought.

Interest on the price which he has paid is also allowed him from the day the action was brought or from the time of payment, if he has not collected any revenue. Civ. C. 549, 1153 et seq., 1614, 1652, 1907.

Art. 1683. Rescission for inadequacy does not take place in favor of the purchaser. Civ. C. 1674.

Art. 1684. It does not take place in any sales which according to law can only be made by order of the Court. Civ. C. 1649.

Art. 1685. The rules contained in the foregoing section for cases in which several persons have sold propertly jointly or separately and in which the vendor or the purchaser has left several heirs, shall likewise be followed in bringing the action for rescission. Civ. C. 1668 et seq.

Chapter VII.

Of Judicial Sales.

Art. 1686. If the joint property of several persons cannot be divided conveniently and without loss;

Or, if in a division of joint property made amicably, there is any property which none of the co-parceners can or is willing to take;

The sale shall take place at auction and the proceeds are distributed between the co-owners. Civ. C. 575, 815 et seq., 827, 838, 1687 et seq., 2109.

Art. 1687. Each of the co-owners is at liberty to ask that the public be given notice of the sale : the public must necessarily be given notice when one of the co-owners is a minor. Civ. C. 459 et seq., 838.

Art. 1688. The method and the formalities to be observed for a judicial sale are explained in the title *Of Successions* and in the Code of Procedure. Civ. C. 815 et seq.

Chapter VIII.

Of Assignments of Claims and other Incorporeal Rights.

Art.. 1689. In case of an assignment of claim or of a right or of a cause of action against a third party, the delivery takes place between the assignor and the assignee by handing over the deed. Civ. C. 1249 et seq., 1275, 1607 et seq., 1690 et seq., 2112 et seq.

Art. 1690. An assignee is only seized of his rights as against third parties by the notice of the assignment given to the debtor.

Nevertheless, the assignee may likewise be seized by the acceptance of the assignment given by the debtor in an official instrument. Civ. C. 1250, 1275, 1277, 1295, 2214.

Art. 1691. If the debtor has paid the assignor before the latter or the assignee has given notice of the assignment to such debtor, he shall be lawfully released. Civ. C. 1240, 1242, 1277, 1295.

Art. 1692. The sale or assignment of a claim includes the accessories of the claim, such as the

security, the preferences and mortgages. Civ. C. 1018, 1249 et seq., 1615, 2103, 2112.

Art. 1693. A person who sells a claim or any other incorporeal right must warrant its existence at the time of the transfer, though no warranty has been stipulated. Civ. C. 1626 et seq., 1694 et seq.

Art. 1694. He does not answer for the solvency of the debtor unless he has bound himself thereto, and then only to the extent of the price which he has obtained for the claim. Civ. C. 886, 1276, 1695.

Art. 1695. When he has agreed to warrant the solvency of the debtor, such undertaking only applies to his present solvency and does not extend to the future, unless the assignor has made an express stipulation to that effect. Civ. C. 1276.

Art. 1696. A person who sells his hereditary rights without specifying the things in detail is only bound to warrant his capacity as heir. Civ. C. 780, 841, 889, 1693 et seq., 1697.

Art. 1697. If he has already had the benefit of the income of any of the property or received the amount of any claim belonging to the inheritance or sold certain things of the succession, he is bound to reimburse the purchaser therefor, unless he has expressly reserved them upon the sale. Civ. C. 1698.

Art. 1698. The purchaser, on the other hand, must reimburse the vendor for what the latter has paid for debts and charges of the succession and make good to him everything that was owed to him, unless there is a stipulation to the contrary. Civ. C. 1697.

Art. 1699. A person against whom a contested claim has been assigned can cause the assignee to

release him by reimbursing to such assignee the actual price of the assignment with the expenses and just charges and interest from the day upon which the assignee paid the price of the assignment made to him. Civ. C. 841, 1597, 1630, 1700 et seq.

Art. 1700. A claim is supposed to be contested when there is a suit or a dispute as to the existence of the right. Civ. C. 1699.

Art. 1701. The provision contained in article 1699 does not apply:

1° In case the assignment has been made to a co-heir or joint owner of the claim assigned;

2° When it has been made to a creditor in payment of what is due to him;

3° When it has been made to the person in possession of the estate subject to the contested right.

TITLE SEVENTH.

Of Exchanges.

(Passed March 7, 1804; promulgated 17th of same month.)

Art. 1702. An exchange is a contract by which the parties give respectively to each other one thing for another. Civ. C. 1136 et seq., 1703 et seq.

Art. 1703. An exchange takes place by simple consent in the same manner as a sale. Civ. C. 1138, 1582 et seq., 1589, 1707.

Art. 1704. If one of the parties to the exchange has already received the thing given to him in exchange and proves subsequently that the other

contracting party is not the owner of such thing, he cannot be compelled to deliver the thing which he has promised in exchange, but only to return the thing which he has received. Civ. C. 1599, 1612, 1653.

Art. 1705. The party to the exchange who is dispossessed of the thing which he has received in exchange, has the choice between asking for damages or claiming back his thing. Civ. C. 1142 et seq., 1184, 1610, 1626 et seq.

Art. 1706. Rescission on account of inadequacy does not take place in contracts of exchange. Civ. C. 1674 et seq.

Art. 1707. All the other rules laid down for contracts of sale shall moreover apply to exchanges. Civ. C. 1582 et seq.

TITLE EIGHTH.

Of Contracts of Letting.

(Passed March 7, 1804; promulgated 17th of same month.)

Chapter I.

General Provisions.

Art. 1708. There are two sorts of contracts of letting:

One of things,

The other of work. Civ. C. 1709 et seq., 1779 et seq.

Art. 1709. The letting of things is a contract by which one of the parties binds himself to procure to

the other, during a certain time and in consideration of a certain price, which the latter promises to pay him, the enjoyment of a thing. Civ. C. 1127, 1711 et seq.

Art. 1710. The letting of work is a contract by which one of the parties binds himself to do a certain thing for the other, in consideration of a price agreed between them. Civ. C. 1142 et seq., 1711, 1779 et seq.

Art. 1711. These two modes of letting are also subdivided into several special kinds :

The letting of houses or of personal property is called *a lease for rent;*

The letting of country property, *a farming lease;*

The letting of labor or service, *a lease;*

The letting of animals, of which the profits are divided between the owner and the one to whom he intrusts them *a "cheptel" lease;*

Estimates, contracts or fixed bargains for undertaking a piece of work in consideration of a fixed price also constitute a lease, when the material is furnished by the person for whom the work is done.

The last three species are governed by special rules. Civ. C. 1714 et seq., 1752 et seq., 1763 et seq., 1779 et seq., 1787 et seq., 1800 et seq.

Art. 1712. Leases of national property, of property of districts, and of public institutions, are subject to special rules. Civ. C. 537.

Chapter II.

Of the Letting of Things.

Art. 1713. One may let all kinds of personal property or real estate. Civ. C. 581 et seq., 631, 634, 1127 et seq., 1709.

Section I.

Of Rules applying both to Leases of Houses and of Country Property.

Art. 1714. Letting may take place by writing or verbally. Civ. C. 1582, 1715 et seq., 1736, 1758, 1774, 2102-1°.

Art. 1715. If a lease made without any writing has not yet been carried out and one of the parties denies its existence, proof cannot be made by witnesses, however small the price may be, and even if it is alleged that earnest money has been given.

The oath can only be deferred to the person who denies that there is a lease. Civ. C. 1341 et seq., 1347, 1357 et seq., 1366 et seq., 1716, 1736, 1758, 1774.

Art. 1716. When there is a dispute as to the price of a verbal lease which has already begun, and no receipt has been given, the landlord shall be believed upon his oath, unless the tenant prefers to apply for an appraisal by experts; in which case the expenses of the appraisal shall be borne by the tenant, if such appraisal exceeds the price which he has declared. Civ. C. 1357 et seq., 1366 et seq.

Art. 1717. The lessee has the right to sublet or

even to assign his lease to another person, if such right has not been taken away from him.

It can be taken away wholly or in part.

This clause is always peremptory. Civ. C. 595, 631, 634, 1735, 1753, 1763.

Art. 1718. The articles of the title *Of Marriage Contracts and of the Respective Rights of Husband and Wife* relating to leases of property belonging to married women apply to leases of property belonging to minors. Civ. C. 450, 481, 509, 595, 1429 et seq.

Art. 1719. A lessor is bound by the nature of the contract and without any special stipulation being required:

1° To deliver to the lessee the property leased;

2° To keep the property in order so that it can be applied to the use for which it has been let;

3° To secure to the tenant the peaceful enjoyment thereof during the continuance of the lease. Civ. C. 600 et seq., 1136 et seq., 1604 et seq., 1720 et seq., 1880 et seq.

Art. 1720. A lessor is bound to deliver the property in good repair in all respects.

He must, during the continuance of the lease, make all the repairs which may become necessary, with the exception of those incumbent upon tenants. Civ. C. 600 et seq., 1719-2°, 1724, 1731, 1754 et seq.

Art. 1721. A warranty is due to the lessee for all the flaws, or defects of the property leased which interfere with the use thereof, even if the lessor did not know of them at the time of making the lease.

If any loss should result to the lessee from such

flaws or defects, the lessor is bound to hold him harmless. Civ. C. 1382, 1625 et seq., 1641 et seq., 1724 et seq., 1891.

Art. 1722. If the property leased is wholly destroyed by accident during the continuance of the lease, the lease is cancelled as a matter of right: if it is only destroyed in part, the lessee may, according to circumstances, either ask for a reduction in the price, or even for the cancellation of the lease. In either case no indemnity shall be due. Civ. C. 617, 1148, 1302 et seq., 1724, 1730, 1735, 1741, 1769, 1882 et seq.

Art. 1723. The lessor cannot change the condition of the thing leased, during the continuance of the lease. Civ. C. 1719-3°, 1728 et seq.

Art. 1724. If, during the continuance of the lease, the thing leased requires urgent repairs, which cannot be postponed until its expiration, the lessee must allow them to be made, whatever inconvenience he may be put to, and although he may be deprived of a part of the thing leased, during the time they are being made.

But if these repairs last more than forty days, the rent shall be reduced, in proportion to the time and the part of the thing leased of which he has been deprived.

If the repairs are of such a nature that they render the premises required to lodge the tenant and his family uninhabitable he can have the lease cancelled. Civ. C. 1148, 1382, 1720 et seq.

Art. 1725. The lessor is not bound to warrant the lessee against the disturbances caused to his enjoyment by acts of violence of third parties, even when they do

not claim to have any right to the property leased; but the lessee can proceed against them in his own name. Civ. C. 1726 et seq.

Art. 1726. If, on the contrary, the tenant or the farmer have been disturbed in their enjoyment in consequence of an action relating to the ownership of the estate, they are entitled to a proportionate reduction of the rent of the lease or farming lease, provided a notice of the disturbance and of the impediment has been given to the landlord. Civ. C. 1630, 1640, 1721, 1727, 1768.

Art. 1727. If those who have committed the acts of violence claim to have some rights to the property leased, or if the lessee has himself been sued in Court to be ordered to give up possession of whole or a part of the property or to allow some servitude to be made use of, he must have the lessor made a party on account of his warranty and, by giving the name of the lessor from whom he holds possession, the lessee shall be entitled to have the action dismissed as against himself, if he demands it. Civ. C. 614, 1725 et seq., 1768.

Art. 1728. A lessee is bound to two principal obligations:

1° To make use of the property leased as a prudent owner, and according to the purposes intended by the lease, or according to those presumed under the circumstances, if there is no agreement to that effect;

2° To pay the rent at the times agreed upon. Civ. C. 601, 1134, 1137, 1719-2°, 1723, 1729 et seq., 1741, 1806, 1880.

Art. 1729. If the lessee uses the property leased

for a different purpose than it was intended, or in a way that the lessor might suffer a loss, the latter may, according to circumstances, have the lease cancelled. Civ. C. 618, 1184, 1719-2°, 1721, 1723, 1728-1°, 1741, 1760, 1766, 1881.

Art. 1730. If a statement of the condition of the premises has been drawn up between the lessor and the lessee, the latter must return the property in the same condition in which he has received it according to such statement, with the exception of what has been destroyed or has been deteriorated by old age or by superior force. Civ. C. 607, 1148, 1234, 1302, 1722, 1735, 1741, 1755, 1769, 1882 et seq.

Art. 1731. If no statement of the condition of the premises has been made, the lessee is supposed to have received them in a good state of repair for occupancy, and must return them in the same state, unless there is proof to the contrary. Civ. C. 1720, 1735, 1754 et seq.

Art. 1732. He is answerable for the deteriorations and losses sustained during his occupancy, unless he establishes that they have not occurred through any fault of his. Civ. C. 1382, 1728, 1735.

Art. 1733. He is liable in case of fire unless he proves:

That the fire took place by accident or superior force or owing to bad construction;

Or that the fire originated in a neighbouring house. Civ. C. 607, 855, 1148, 1302, 1384 et seq., 1722, 1730, 1734 et seq., 1755, 1882, 1929.

Art. 1734. (Law of January 5, 1883). If there are several tenants, each one is responsible for the

fire in proportion to the letting value of the part of the premises which he occupies;

Unless they prove that the fire broke out in the premises of one of them, in which case that one alone is responsible ;

Or unless some of them prove that the fire could not have broken out on their premises, in which case such ones are not responsible.

Art. 1735. A lessee is responsible for the deteriorations and losses occasioned by the persons belonging to his household or by his sub-tenants. Civ. C. 1382 et seq., 1717, 1732, 1953.

Art. 1736. If the lease has not been made in writing, one of the parties can only give notice to quit to the other, by complying with the customs of the place as to the time required. Civ. C. 1159 et seq., 1714 et seq., 1737 et seq., 1748, 1757 et seq., 1774 et seq.

Art. 1737. A lease ceases as a matter of right at the expiration of the time specified, when it has been made in writing, and it is not necessary to give notice to quit. Civ. C. 1139, 1736, 1762, 1775.

Art. 1738. If, at the expiration of written leases, the lessee remains and is allowed to continue in possession, a new lease is created, of which the effect is regulated by the article relating to unwritten leases. Civ. C. 1715 et seq., 1736, 1739 et seq., 1759, 1776.

Art. 1739. When notice to quit has been given, the lessee cannot claim a tacit renewal, although he has continued his occupancy. Civ. C. 1736 et seq., 1762.

Art. 1740. In the cases mentioned in the two

foregoing articles, the security given for the lease does not extend to the obligations resulting from its extension. Civ. C. 2015, 2034, 2039, 2102-1°, 2127.

Art. 1741. A contract for letting expires by the destruction of the thing leased, and by the failure on the part of the lessor and lessee respectively to carry out what they have agreed to. Civ. C. 607, 617, 1148, 1184, 1234, 1302 et seq., 1722, 1730, 1735, 1760, 1769, 1881 et seq.

Art. 1742. A contract for letting does not expire owing to the death of the lessor or the lessee. Civ. C. 617, 724, 1122, 1795, 1879, 2236 et seq.

Art. 1743. If the lessor sells the property leased, the purchaser cannot eject the farmer or tenant who has a lease in authentic form or a lease with a positive date, unless such right has been reserved in the contract of letting. Civ. C. 621, 1328, 1719, 1744 et seq., 1761.

Art. 1744. If it has been agreed at the time of the lease that in case of sale the purchaser might expel the farmer or tenant, and no stipulation has been made as to damages, the lessor is bound to indemnify the farmer or tenant in the following manner. Civ. C. 1149, 1382, 1745 et seq.

Art. 1745. In case of a house, an apartment or a store, the lessor shall pay as damages to the tenant who has been ejected a sum equal to the price of the rent during the time which is granted, from the notice to quit up to the time to move out, according to the customs of the place. Civ. C. 1149, 1159, 1736, 1748 et seq.

Art. 1746. In case of country property, the in-

demnity which the lessor must pay to the farmer shall be one-third of the price of the lease for all the time which still remains to run.

Art. 1747. The indemnity shall be fixed by experts in case of factories, works and other establishments which require important outlays.

Art. 1748. A purchaser who wishes to make use of the privilege reserved by the lease to eject a tenant or farmer in case of sale, is also bound to give notice to the tenant in advance, according to the time required by the customs of the place for notices to quit.

He must also give notice to the farmer of country property, at least one year in advance. Civ. C. 1159, 1736, 1774.

Art. 1749. Farmers or tenants cannot be ejected, unless the damages hereabove specified have been paid to them by the lessor, or if not by him by the new purchaser. Civ. C. 1745 et seq.

Art. 1750. If the lease has not been made in public form or has no positive date, the purchaser is not responsible for any damages. Civ. C. 1328, 1743 et seq.

Art. 1751. A purchaser when there is a power of redemption cannot make use of the privilege of ejecting the tenant, until he has become the absolute owner, by the expiration of the time fixed for the redemption. Civ. C. 1659 et seq., 1743 et seq.

Section II.

Of Special Rules as to Leases for Rent.

Art. 1752. A tenant who does not furnish the house with enough furniture, may be ejected, unless he gives sufficient security to answer for the rent. Civ. C. 1741, 1760, 1766, 2011, 2073, 2102-1°.

Art. 1753. A sub-tenant is only liable to the owner to the extent of the rent of the sub-lease which he may owe at the time of the attachment, but he cannot set up payments made in advance.

Payments made by a sub-tenant, either by virtue of a stipulation contained in his lease or in consequence of a custom of the place, are not supposed to be made in advance. Civ. C. 1717, 1735, 1763.

Art. 1754. Repairs incumbent upon the tenant, or those of small importance for which the tenant is responsible, unless there is a stipulation to the contrary, are those which are considered as such by the customs of the place and among others the repairs to be made:

To fireplaces, chimney breasts, sides and tops of mantel-pieces;

To the plastering of the lower parts of walls of apartments and other places of abode, to the height of one metre

To pavements and tiles of rooms when only a few are broken;

To panes of glass, unless they have been broken by hail, or some other extraordinary accident resulting from superior force, for which the tenant cannot be made liable;

To doors, windows, partitions or shutters of a shop,

hinges, bolts and locks. Civ. C. 606, 1720, 1731 et seq., 1755 et seq., 2102-1°.

Art. 1755. None of the repairs considered as repairs incumbent upon the tenant shall be charged to tenants, when they are occasioned by old age or superior force. Civ. C. 1754-4°.

Art. 1756. The cleaning of wells and cesspools shall be paid for by the lessor, unless there is a clause to the contrary.

Art. 1757. A lease of furniture supplied to furnish a whole house, a whole main building, a store or any other lodging is supposed to be made for the ordinary time of leases of houses, main buildings, stores or other lodgings, according to the customs of the place. Civ. C. 1736 et seq.

Art. 1758. A lease of a furnished apartment is considered to be made by the year, when it has been made for so much a year;

By the month, when it has been made for so much a month;

By the day, when it has been made for so much a day.

If there is nothing to show that the lease has been made for so much a year, a month, or a day, the letting is supposed to have been made according to the customs of the place. Civ. C. 1159, 1736 et seq.

Art. 1759. If the tenant of a house or of an apartment continues his occupancy, after the expiration of a written lease without objection on the part of the lessor, he shall be considered as occupying it under the same conditions for the term fixed by the customs of the place, and he cannot leave or be ejected until

after a notice to quit has been given, according to the time required by the customs of the place. Civ. C. 1159, 1738, 1776.

Art. 1760. In case of cancellation owing to the fault of the lessee, he is obliged to pay the price of the rent during the time required to relet, without prejudice to the damages which may result from his wrongful act. Civ. C. 1149, 1382, 1728 et seq., 1752.

Art. 1761. A lessor cannot cancel a lease, even if he declares that he wants to live himself in the house leased, unless there is a stipulation to the contrary. Civ. C. 1134, 1743, 1762, 1889.

Art. 1762. If it has been agreed in the lease that the lessor may come and occupy the house, he is bound to give notice to quit in advance, at the times fixed by the customs of the place. Civ. C. 1736 et seq., 1748.

Section III.

Of Special Rules as to Farming Leases.

Art. 1763. A person who cultivates land under condition of a division of the revenue with the lessor, cannot sublet or assign his lease, unless such power has been expressly granted to him therein. Civ. C. 1237, 1717, 1764 et seq., 1832 et seq.

Art. 1764. In case of violation of this condition, the owner has the right to re-enter and the lessee shall be ordered to pay the damages resulting from the violation of the lease. Civ. C. 1142, 1146 et seq., 1741.

Art. 1765. If, in a farming lease, a smaller or larger area has been given to the property than it

really has, the price which the farmer has to pay shall only be increased or reduced in the cases and according to the rules specified in the title *Of Sale.* Civ. C. 1617 et seq.

Art. 1766. If a lessee of country property does not stock it with sufficient cattle and implements for its cultivation; if he stops cultivating it or does not cultivate it as a prudent owner; if he applies the property leased to a use for which it was not intended, or in general if he does not fulfil the conditions of the lease and the lessor suffers a loss thereby, the latter may, according to circumstances, have the lease cancelled.

In case of cancellation owing to an act of the lessee, he is liable for damages, as is stated in article 1764. Civ. C. 1142, 1184, 1729, 1741, 1752, 1764, 2102-1°.

Art. 1767. Every lessee of country property is bound to store the crops in the places provided for that purpose, according to the lease. Civ. C. 1777 et seq., 2102-1°.

Art. 1768. A lessee of country property is bound to give notice to the owner of all encroachments upon the property, under penalty of all costs and damages.

Such notice must be given within the same time as that fixed for service of a summons, according to the distance between places. Civ. C. 614, 1142, 1726 et seq.

Art. 1769. If the lease is made for several years, and during the lease the whole or half of a crop at least has been destroyed accidentally, the farmer can ask for a reduction of the price of the lease, unless his loss is made up by previous crops.

If he has not been indemnified, the reduction can

only be appraised at the end of the lease, at which time an average shall be taken of all the years of his occupancy.

Nevertheless, the Judge may temporarily relieve the lessee from paying a part of the price in consequence of the loss he has sustained. Civ. C. 1148, 1234, 1302, 1722, 1770 et seq.

Art. 1770. If the lease is only for one year and the loss is of the whole crop or at least of one-half, the lessee shall be relieved from the payment of a proportionate part of the rent.

He cannot claim any reduction if the loss is less than one-half. Civ. C. 1769, 1771 et seq.

Art. 1771. A farmer cannot obtain any reduction when the loss of the crops occurs after they have been separated from the soil, unless the lease gives the owner a part of the crop in kind; in such case the owner must bear his share of the loss, provided a demand had not been made upon the lessee to deliver his portion of the crop.

Neither can the farmer ask for a reduction when the cause of the loss already existed and was known at the time of the making of the lease. Civ. C. 520, 1138 et seq., 1302, 1769 et seq.

Art. 1772. A lessee may be made responsible for accidents, by an express stipulation. Civ. C. 1134, 1148, 1302, 1773.

Art. 1773. Such a stipulation shall only apply to ordinary accidental cases, such as hail, lightning, frost or dropping-off.

It does not extend to extraordinary accidental cases, such as destruction resulting from war or floods, which the country is not ordinarily subject to, unless the

lessee has assumed all accidental causes, whether foreseen or unforeseen. Civ. C. 1772.

Art. 1774. An unwritten lease of country property is supposed to be made for the time that is necessary for the lessee to gather all the crops of the property leased.

For instance, a farming lease of a prairie, a vineyard, or any other property of which the crops are all gathered during the course of the year, is supposed to be made for one year.

A lease of arable lands, when they are divided according to rotation or by seasons, is supposed to be made for as many years as there are rotations. Civ. C. 1736.

Art. 1775. (Law of October 24, 1919). A lease of country property, although unwritten, only ceases at the expiration of the time specified in the foregoing article when a written notice to quit has been given by one of the parties to the other, six months before that time.

If no notice to quit has been given within the time above prescribed, a new lease begins to run, of which the effects are regulated by article 1774. Civ. C. 1737, 1774, 1776.

Art. 1776. If, at the expiration of written leases for country property, the lessee remains or is allowed to remain in possession, a new lease comes into operation, of which the effects are governed by article 1774. Civ. C. 1738 et seq., 1759, 1774 et seq.

Art. 1777. The outgoing farmer must leave to the one who succeeds him in the cultivation of the land, suitable buildings and other facilities for the work of the following year; and reciprocally the farmer

entering into possession must furnish to the one who is leaving, suitable buildings and other facilities for the consumption of fodder and for the crops which are still to be gathered.

In both cases the customs of the place must be complied with. Civ. C. 1767, 1778.

Art. 1778. The outgoing farmer must also leave the straw and the manure of the year, if he has received them when he entered into possession: and even if he has not received them, the owner may retain them after having them appraised. Civ. C. 524, 1767, 1777, 2012-1°.

Chapter III.

Of the Letting of Work and Industry.

Art. 1779. There are three principal kinds of letting of work and industry:

1° The hiring of workmen who enter the service of a person;

2° The hiring of carriers, as well by land as by water, who undertake to carry persons or goods;

3° The hiring of contractors for work, on an estimate or by the job. Civ. C. 1710 et seq., 1780 et seq., 1787 et seq.

Section I.

Of the Hiring of Servants or Workmen.

Art. 1780. (Law of December 17, 1890). A person can only bind himself to give his services for a certain time or for a special enterprise.

The hiring of services made without a fixed duration can always cease, at the will of one of the contracting parties.

Nevertheless, the cancellation of the contract at the will of one only of the contracting parties may give rise to damages.

To fix the indemnity to be granted, if there should be reason therefor, the customs, the nature of the services hired, the time elapsed, the amounts withheld and the payments made in view of a pension upon retirement, and generally all the circumstances which may justify the existence and determine the extent of the damage caused, shall be taken into account.

The parties cannot beforehand renounce the contingent right to claim damages in consequence of the foregoing provisions.

The controversies to which the application of the foregoing paragraphs may give rise, when they are brought before the Civil Tribunals and the Courts of Appeals, shall be prepared for trial as urgent cases and tried forthwith.

Art. 1781. (Repealed by Law of August 2, 1868). *A master shall be believed upon his affirmation:*

As to the amount of wages;

As to the payment of the salary for the year elapsed;

And as to the instalments paid for the current year.

Section II.

Of Carriers by Land and Water.

Art. 1782. Carriers by land and water are subject, with respect to the safe-keeping and preservation of the things which are intrusted to them, to the same

obligations as innkeepers, as is stated in the title *Of Deposits and Sequestration.* Civ. C. 1137, 1348, 1783 et seq., 1952 et seq., 1984 et seq., 2102-6°.

Art. 1783. They are answerable, not only for what they have already received on board their ships or in their carriages, but also for what has been delivered to them at the port or in their warehouses, to be placed aboard their ships or in their carriages. Civ. C. 1302, 1384 et seq., 1952 et seq.

Art. 1784. They are liable for the loss of or damage to the things which are intrusted to them, unless they prove that the things have been lost or damaged accidentally or by superior force. Civ. C. 1148, 1302 et seq., 1382 et seq.

Art. 1785. Common carriers by land and water and those who cart for the public must keep books of accounts for the money, the articles and the packages they take charge of. Civ. C. 1331, 1348, 1950.

Art. 1786. Common carriers and agents of public carriages and carts, masters of boats and ships, are also subject to special regulations, which constitute the law between them and other citizens.

Section III.

Of Estimates and Jobs.

Art. 1787. When one gives a person a certain work to do, it can be agreed that he will only furnish his work or industry, or that he will also furnish the material. Civ. C. 572 et seq., 1711, 1779, 1788 et seq.

Art. 1788. If, in case the workman supplies the

material, the thing is destroyed before it is delivered, in whatever manner it may happen, the loss falls upon the workman, unless a demand had been made upon the master to receive the thing. Civ. C. 1136 et seq., 1146, 1182, 1302 et seq., 1606 et seq., 1789.

Art. 1789. In case the workman only furnishes his work or his industry and the thing happens to be destroyed, the workman is only liable for his negligence. Civ. C. 1302, 1382 et seq., 1788, 1790.

Art. 1790. If, in the case mentioned in the foregoing article, the thing happens to be destroyed, but not through any fault of the workman, before the work has been received and without a demand having been made upon the master to examine it, the workman cannot claim any wages, unless the destruction of the thing is due to the bad quality of the material. Civ. C. 1139, 1788, 1792.

Art. 1791. In case of a work for several pieces or by measure, it may be examined by parts: it is supposed to be finished for all the parts paid, if the master pays the workman in proportion to the work done.

Art. 1792. If a building constructed at a fixed price is destroyed wholly or in part, owing to bad construction or even to some defect of the soil, the architect and the contractor are responsible for ten years. Civ. C. 1302, 1793 et seq., 2103-4°, 2110, 2270.

Art. 1793. When an architect or a contractor has undertaken to put up a building at a contract price, according to plans settled and agreed upon with the owner of the land, he cannot ask for any increase in

the price, either on the ground that labor and materials have increased in value or on the ground of changes or additions made in the plans, unless these changes and additions have been authorized in writing and the price agreed upon with the owner. Civ. C. 1134, 2013-4°, 2110.

Art. 1794. A master may of his own accord cancel a job which has been undertaken at a fixed price, even if the work has already been commenced, by compensating the contractor for all his expenses, his work and all he might have made out of the enterprise. Civ. C. 1149, 1382.

Art. 1795. A contract for the letting of work expires by the death of the workman, the architect or the contractor. Civ. C. 1122, 1237, 1742, 1796, 2003, 2010.

Art. 1796. But the owner is bound to pay to their succession the amount of the work done and of the materials prepared, in proportion to the price agreed in the contract, but only if the work and the materials can be of use to him. Civ. C. 724, 1999.

Art. 1797. A contractor is answerable for the acts of the persons whom he employs. Civ. C. 1384, 1994.

Aart. 1798. Masons, carpenters and other workmen who have been employed in the construction of a building or other works undertaken upon a contract, only have a cause of action against the person for whom the work has been done to the extent of what such person owes the contractor, at the time the action is commenced. Civ. C. 1166, 1799, 2103-4°-5°, 2110, 2270.

Art. 1799. Masons, carpenters, locksmiths and other workmen who make contracts by the job for their own account are bound by the rules contained in the present section: they become contractors for the kind of work they undertake. Civ. C. 1798.

Chapter IV.

Of Leases of Cattle.

Section I.

General Provisions.

Art. 1800. A lease of cattle is a contract by which one of the parties gives to the other a stock of cattle, to be kept, fed and cared for, under conditions agreed upon between them. Civ. C. 522-2°, 1711, 1801 et seq.

Art. 1801. There are several kinds of leases of cattle:

Simple or ordinary leases of cattle;

Leases of cattle by half;

Leases of cattle granted to a farmer or settler who pays in kind;

There is also a fourth kind of contract improperly called lease of cattle. Civ. C. 1804 et seq., 1818 et seq., 1821 et seq., 1827 et seq., 1831.

Art. 1802. A lease of cattle can be made for all kinds of animals which can increase or be made use of for agricultural or commercial purposes.

Art. 1803. If there is no special agreement, these contracts are governed by the following principles. Civ. C. 1814 et seq., 1827 et seq., 1831.

Section II.

Of Simple Leases of Cattle.

Art. 1804. A simple lease of cattle is a contract by which one person gives to another cattle to be kept, fed and cared for, on condition that the lessee shall have the benefit of one-half of the growth and shall also bear one-half of the loss. Civ. C. 1711, 1800 et seq., 1805 et seq., 1853.

Art. 1805. The estimate placed upon the cattle in the lease does not confer ownership upon the lessee: its only effect is to fix the loss or the gain which may exist, at the expiration of the lease. Civ. C. 1810, 1815 et seq., 1822.

Art. 1806. A lessee is bound to give to the preservation of the cattle the care of a prudent owner. Civ. C. 601, 1137, 1728, 1809 et seq., 1880.

Art. 1807. He is only liable for accidents when they result from negligence on his part, without which the loss would not have occurred. Civ. C. 1148, 1302, 1382, 1772 et seq., 1804, 1808 et seq., 1884.

Art. 1808. In case of dispute, the lessee is bound to prove the accident and the lessor is bound to prove the negligence with which he charges the lessee. Civ. C. 1315 et seq., 1341 et seq.

Art. 1809. A lessee who is exonerated from the cause of an accident, is always bound to account for the skins of the animals. Civ. C. 616, 1993.

Art. 1810. If all the animals die, not through any negligence of the lessee, the loss falls upon the lessor.

If only a part of them die, the loss is apportioned jointly, acording to the amount of the original appraisal and the amount of the appraisal at the expiration of the lease. Civ. C. 615 et seq., 1302 et seq., 1382, 1805, 1807, 1811, 1817, 1825, 1827.

Art. 1811. It cannot be agreed:

That the lessee shall bear the total loss of the cattle, although it may have occurred accidentally and not through his negligence.

Or that he shall bear a larger part of the losses than of the profits;

Or that the lessor, at the end of the lease, shall be entitled to more than the cattle has produced.

Any agreement of this kind is void.

The lessee has alone the right to the milk, the manure and the labor of the cattle leased.

The wool and the increase of the cattle are divided. Civ. C. 6, 583, 1804, 1817, 1819, 1828, 1855.

Art. 1812. A lessee cannot dispose of any head of cattle, either of the stock or of the increase, without the consent of the owner, nor can the latter dispose of any of the same without the lessee's consent. Civ. C. 1804 et seq., 2279 et seq.

Art. 1813. When a lease of cattle is made to the farmer of another person, a notice thereof must be given to the landlord from whom such farmer holds possession: otherwise the landlord can have the cattle attached and sold for what his farmer owes him. Civ. C. 2102-1°.

Art. 1814. A lessee cannot shear without notifying the lessor. Civ. C. 1811.

Art. 1815. If no time has been fixed by the agree-

ment for the duration of the lease, it is supposed to have been made for three years. Civ. C. 1774, 1816 et seq.

Art. 1816. A lessor may sue to have it cancelled sooner, if the lessee does not fulfil his obligations. Civ. C. 1142, 1184, 1741 1760, 1865-5°, 1871.

Art. 1817. At the end of the lease, or at the time it is cancelled, a new appraisal of the cattle is made.

The lessor can take heads of cattle of each kind up to the first appraisal: the balance is divided.

If there are not enough heads of cattle to make up the amount of the first appraisal, the lessor takes what remains and the parties account to each other for the loss. Civ. C. 1805, 1810, 1826, 1853.

Section III.

Of Leases of Cattle by Halves.

Art. 1818. A lease of cattle on half shares is a partnership by which each one of the contracting parties furnishes one-half of the cattle, which remain in common for profit or loss. Civ. C. 1800 et seq., 1819 et seq., 1832, 1853.

Art. 1819. The lessee alone has the benefit of the milk, the manure and the labor of the cattle, as in an ordinary lease of cattle.

The lessor is only entitled to one-half of the wool and of the increase.

Any agreement to the contrary is void, unless the lesssor is the owner of the farm of which the lessee is the farmer or settler paying in kind. Civ. C. 6, 1804, 1811, 1823, 1828, 1855.

Art. 1820. All the other rules of an ordinary

lease of cattle apply to leases of cattle on half shares. Civ. C. 1805 et seq.

Section IV.

Of Leases of Cattle granted by Landlords to their Farmers or Settlers paying in Kind.

§ 1. *Of Leases of Cattle given to the Farmer.*

Art. 1821. This kind of lease of cattle (*also called rigid lease of cattle*) is one by which the landlord of a farm lets it on condition that, at the expiration of the lease, the farmer shall leave cattle of a value equal to the estimated price of the cattle which he has received. Civ. C. 1800 et seq., 1822 et seq.

Art. 1822. The appraisal of the cattle given to the farmer does not confer upon him the ownership thereof, but, nevertheless, places it at his risk. Civ. C. 1805, 1826, 1883.

Art. 1823. All the profits belong to the farmer during the continuance of the lease, unless there is a stipulation to the contrary. Civ. C. 582 et seq., 1811, 1819, 1824 et seq.

Art. 1824. In leases of cattle made to a farmer, the manure does not form part of the personal profits of the lessees, but belongs to the farm and must be applied exclusively to its cultivation. Civ. C. 524, 1767, 1778, 1823.

Art. 1825. The loss, even total and accidental, falls wholly upon the farmer, unless there is an agreement to the contrary. Civ. C. 616, 1302 et seq., 1807, 1810 et seq., 1818, 1822 et seq., 1827 et seq.

Art. 1826. At the end of the lease, the farmer

cannot keep the cattle by paying the original estimated value: he must leave cattle of a value equal to what he has received.

In case of deficiency he must make it up, and the surplus only belongs to him. Civ. C. 1817, 1821 et seq., 1829.

§ 2. *Of Leases of Cattle given to Settlers paying in Kind.*

Art. 1827. If all the animals die, not through the negligence of the lessee, the loss falls upon the lessor. Civ. C. 615 et seq., 1302 et seq., 1382, 1807 et seq., 1810, 1825, 1828.

Art. 1828. It can be stipulated that the lessee shall abandon to the lessor his share of the wool at a price below the ordinary value;

That the lessor shall have a larger share of the profits;

That he shall have half the milk;

But it cannot be stipulated that the settler shall bear the whole loss. Civ. C. 6, 1811, 1819, 1853 et seq.

Art. 1829. A lease of cattle expires with the lease of the farm. Civ. C. 1737 et seq., 1774 et seq., 1815.

Art. 1830. It is moreover governed by all the rules of an ordinary lease of cattle. Civ. C. 1803 et seq.

Section V.

Of the Contract incorrectly called Lease of Cattle.

Art. 1831. When one or more cows are given to be kept and fed, the lessor retains their ownership:

he is only entitled to the profit of the calves which are born of them.

TITLE NINTH.

Of Contracts of Partnership.

(Passed March 8, 1804; promulgated 18th of same month.)

Chapter I.

General Provisions.

Art. 1832. A partnership is a contract by which two or several persons agree to place a thing in common, in view of dividing the profits which may result therefrom. Civ. C. 1101 et seq., 1833 et seq., 1853 et seq., 1873.

Art. 1833. Every partnership must have a licit cause and be made in the common interest of the parties.

Each partner must contribute either money or other property, or his work. Civ. C. 6, 1108, 1126 et seq., 1133, 1172, 1845 et seq., 1855.

Art. 1834. Every partnership must be made in writing, if its object is of a value exceeding one hundred and fifty francs.

No oral testimony shall be admitted against or beyond the contents of the articles of co-partnership, nor as to what may be alleged to have been said before, or at the time, or since the agreement, even if the amount or value involved is less than one hundred and fifty francs. Civ. C. 1325, 1341, 1347, 1354 et seq., 1358 et seq., 1866.

Chapter II.

Of Different Kinds of Partnership.

Art. 1835. Partnerships are general or specific. Civ. C. 1836 et seq., 1841 et seq.

Section I.

Of General Partnerships.

Art. 1836. General partnerships are divided into two kinds, partnerships of all present property and general partnerships of profits. Civ. C. 1837 et seq.

Art. 1837. A partnership of all present property is one by which the parties place in common all the personal property and real estate which they own at the present time, and the profits which they may derive therefrom.

They may also include therein all other kinds of profits; but the property which may come to them by inheritance, donation or legacy only forms part of the partnership as to the enjoyment thereof: all stipulations for the purpose of including the ownership of such property are prohibited, except between husband and wife, and in accordance with what is specified in their connection. Civ. C. 1130, 1133, 1172, 1401 et seq., 1409 et seq., 1499, 1505, 1526, 1542.

Art. 1838. A general partnership of profits includes everything the parties may earn by their industry, in anyway whatsoever during the continuance of the partnership: the personal property which each of the parties owns at the time of the contract is also included; but their individual real estate is only included as to its enjoyment. Civ. C. 1402, 1499, 1837, 1847, 1853.

Art. 1839. A simple agreement for a general partnership, made without any other explanation, only carries with it a general partnership of profits. Civ. C. 1838.

Art. 1840. A general partnership can only exist between persons who are respectively capable of giving to or receiving from each other, and to whom it is not forbidden to reserve advantages to themselves to the detriment of others. Civ. C. 854, 906 et seq., 911, 913 et seq., 1098 et seq., 1496, 1527.

Section II.

Of Specific Partnerships.

Art. 1841. A specific partnership is one which only applies to certain specified things or to their use or to the revenue to be derived therefrom. Civ. C. 1126 et seq., 1835, 1842.

Art. 1842. A contract by which several persons become partners, either for a specified enterprise or for carrying on a trade or profession, is also a specific partnership. Civ. C. 1841.

Chapter III.

Of Agreements of Partners between themselves and with regard to Third Parties.

Section I.

Of Agreements of Partners between Themselves.

Art. 1843. A partnership commences from the moment the contract is made, if it does not fix any other time. Civ. C. 1834.

Art. 1844. If no agreement has been made as to the duration of the partnership, it is supposed to have been contracted for the whole life of the partners, subject to the restriction contained in article 1869; or if the business is such that its duration is limited, for all the time such business is to last. Civ. C. 815, 1865 et seq.

Art. 1845. Each partner owes the partnership everything he has promised to contribute.

When this contribution consists of a specific thing and the partnership is dispossessed thereof, the partner is responsible to the partnership in the same way as a vendor is to his purchaser. Civ. C. 1136 et seq., 1626 et seq., 1725 et seq., 1833, 1851 et seq., 1867.

Art. 1846. A partner who was to contribute a sum of money to the partnership and who has not done so, owes, as a matter of right and without demand, the interest on this amount from the day it should have been paid.

The same rule applies to the sums which he has taken from the funds of the partnership, from the day he has withdrawn them for his special benefit.

All of which is without prejudice to heavier damages, if there is occasion therefor. Civ. C. 1146, 1149, 1153 et seq., 1907.

Art. 1847. Partners who have agreed to contribute their industry to the partnership, are accountable to it for all the profits which they have made by the kind of industry which forms the object of such partnership. Civ. C. 1838, 1845 et seq., 1853 et seq.

Art. 1848. When one of the partners is a creditor, for his own special account, for an amount due by a

person who also owes the partnership an amount likewise due, the apportionment of what he receives from such debtor must be made with respect to the claim of the partnership and his own in proportion to both claims, even if by his receipt he has directed that the whole payment should be applied to his private claim: but if in his receipt he has declared that the whole payment should be applied to the partnership claim, this stipulation shall be carried out. Civ. C. 1215, 1253 et seq., 1889.

Art. 1849. When one of the partners has received his entire share of a common claim and the debtor has since become insolvent, such partner is bound to return to the common fund what he has received, even if he has given a special receipt *for his share.* Civ. C. 1214 et seq., 1848.

Art. 1850. Each partner is liable to the partnership for the damages occasioned by his negligence, and he cannot offset such damages against the profits which have been derived from his industry in other affairs. Civ. C. 1137, 1291 et seq., 1382 et seq.

Art. 1851. If the property of which the enjoyment only has been granted to the partnership consists of special and specified things which are not consumed by use, they remain at the risk of the partner who owns them.

If such things are consumed by use; if they would deteriorate by being kept; if they were intended to be sold, or if they have been put into the partnership upon a valuation given to them in an inventory, they are at the risk of the partnership.

If the thing has been appraised, the partner can only recover the amount of the valuation. Civ. C.

543, 578, 587, 1138, 1245, 1302 et seq., 1532, 1551 et seq., 1845, 1867.

Art. 1852. A partner has a cause of action against the partnership not only on account of the sums which he has disbursed for it, but also on account of the obligations which he has contracted in good faith for the business of the partnership and the risks inseparable from his management. Civ. C. 1215, 1375, 1846, 1998 et seq.

Art. 1853. When the articles of partnership do not fix the share of each partner in the profits or losses, each one's share is in proportion to his contribution to the capital of the partnership.

As regards the one who only contributes his industry, his share of the profits or losses is fixed as if his contribution had been the same as the one of the partner who has contributed the least. Civ. C. 870, 1863.

Art. 1854. If the partners have agreed to leave it to one of them or to a third party to fix the shares, the adjustment cannot be attacked, unless it is manifestly contrary to equity.

No claim shall be admitted in this respect, if more than three months have elapsed since the party who pretends that he has been wronged has had knowledge of the adjustment, or if he has already commenced to carry it out. Civ. C. 1592.

Art. 1855. An agreement by which one of the parties is to receive all the profits is void.

Likewise a stipulation which exempts the sums or articles contributed to the capital of the partnership by one or several parties from participating in any

part of the losses shall be void. Civ. C. 6, 1133, 1172, 1811, 1819, 1823, 1825, 1828, 1853.

Art. 1856. A partner who has charge of the management by virtue of a special clause of the articles of partnership can, notwithstanding the objections of the other partners, do all things relating to his management, provided he does not act fraudulently.

Such power cannot be revoked without legitimate cause so long as the partnership lasts; but if it has only been given by an agreement subsequent to the articles of partnership, it can be revoked as an ordinary power of attorney. Civ. C. 1857 et seq., 1988 et seq., 2003.

Art. 1857. When several partners have charge of the management without their duties being specified, or without it having been agreed that one of them could not act without the other, each of them can do separately all things connected with such management. Civ. C. 1859-1°, 1995.

Art. 1858. If it has been stipulated that one of the managers cannot do anything without the other, one of them cannot act in the absence of the other without a new agreement, even when it is positively impossible for the other to take part in the acts of management. Civ. C. 1862, 1989.

Art. 1859. In default of special stipulations as to the mode of management, the rules hereafter laid down shall be followed:

1° The partners are supposed to have given reciprocally to each other the power to manage. What each one does is valid, even as regards the shares of his partners, without their consent having been

obtained; subject to the right which belongs to the latter, or one of them, to object to the matter before it is closed;

2° Each partner may make use of the things belonging to the partnership, provided he uses them for the purpose for which they are intended usually, and does not use them against the interests of the partnership, or in a way to prevent his partners from using them according to their rights;

3° Each partner has the right to oblige his partners to bear with him the expenses which are necessary for the preservation of the property of the partnership;

4° One of the partners cannot make any alterations in the real estate forming part of the partnership, even if he claims that they are to the advantage of such partnership, unless the other partners consent thereto. Civ. C. 1375, 1381, 1856 et seq., 1988.

Art. 1860. A partner who is not a manager cannot convey or encumber the property, even personal, forming part of the partnership. Civ. C. 1594, 1856, 1859-1°.

Art. 1861. Each partner may, without the consent of his partners, take into partnership with himself a third party in connection with his share of the partnership: he cannot take him into the partnership without such consent, even if he has the management thereof. Civ. C. 1859-4°.

Section II.

Of Agreements of Partners with respect to Third Parties.

Art. 1862. In partnerships which are not commercial, the partners are not jointly liable for the

partnership debts and one partner cannot bind the others, if the latter have not conferred upon him the power so to do. Civ. C. 1200 et seq., 1858 et seq., 1989.

Art. 1863. Partners are liable to creditors with whom they have dealt, each one for an equal sum and share, even if the share of one of them in the partnership is smaller, unless the contract has specifically restricted the responsibility of one of the partners in proportion to his share. Civ. C. 873.

Art. 1864. A stipulation to the effect that an obligation is assumed for account of the partnership only binds the contracting partner and not the others, unless the latter have given him power to do so or unless the matter has benefited the partnership. Civ. C. 1165 et seq., 1375, 1856 et seq., 1862, 1984 et seq.

Chapter IV.

Of the different Ways in which a Partnership comes to an end.

Art. 1865. A partnership comes to an end:

1° By the expiration of the time for which it has been formed;

2° By the destruction of the thing, or the completion of the business;

3° By the natural death of one of the partners;

4° By *the civil death* (1), the interdiction or the insolvency of one of them;

(1) Civil death was abolished by the Law of 31st May, 1854.

5° By the wish expressed by one or more not to continue the partnership. Civ. C. 23, 25, 509, 513, 1234, 1844, 1867 et seq.

Art. 1866. The extension of a partnership made for a fixed period can only be proved by a written instrument, in the same form as the contract of co-partnership. Civ. C. 1834.

Art. 1867. When one of the partners has promised to place the ownership of a thing in common, the loss of the thing produces the dissolution of the partnership with respect to all the partners, if it has occurred before the thing was turned over.

The loss of a thing also dissolves the partnership in all cases, when its use has alone been placed in common and the partner has retained the ownership.

But the partnership is not dissolved by the loss of a thing of which the ownership has already been transferred to the partnership. Civ. C. 1138, 1182, 1302 et seq., 1601, 1722, 1845, 1851, 1865-2°.

Art. 1868. — If it has been stipulated that in case of the death of one of the partners the partnership shall continue with his heir, or only between the surviving partners, such provisions shall be followed: in the second case the heir of the decedent is only entitled to a distribution of the partnership property, according to the condition of the partnership at the time of the death, and is only entitled to subsequent rights in so far as they necessarily result from what was done before the death of the partner from whom he inherits. Civ. C. 724, 1122, 1865-3°, 1872, 2010.

Art. 1869. The dissolution of a partnership by the wish of one of the parties only applies to partnerships of which the duration is unlimited and takes

place by a renunciation of which notice is given to all the partners, provided such renunciation is made in good faith and not at an inopportune moment. Civ. C. 1844, 1865-5°, 1870 et seq.

Art. 1870. A renunciation is not in good faith when the partner renounces for the purpose of appropriating to himself alone the profits which the partners expected to earn jointly.

It is made at an inopportune moment, when the business is not finished and it is important for the partnership that its dissolution should be deferred.

Art. 1871. A dissolution of partnership for a limited time cannot be asked for by one of the partners before the time agreed upon, unless there are good reasons therefor, such as when another partner does not fulfil his duties, or a permanent infirmity unfits him for the business of the partnership, or other such similar causes of which the soundness and importance are left to the discretion of the Court. Civ. C. 1142, 1146, 1184, 1865-1°, 1869.

Art. 1872. — The rules relating to divisions of successions, the manner of making the same, and the obligations resulting therefrom between co-heirs, apply to divisions between partners. Civ. C. 815 et seq., 870 et seq., 883 et seq., 887 et seq., 1686 et seq., 2103-3°, 2109.

Provision relating to Commercial Partnerships.

Art. 1873. The provisions of the present title only apply to commercial partnerships as regards the points which do not conflict in any way with commercial laws and customs.

TITLE TENTH

Of Loans.

(Passed March 9, 1804; promulgated 19th of same month.)

Art. 1874. There are two kinds of loans;

Loans of things which can be used without being destroyed;

And loans of things which are consumed by the use which is made of them.

The first kind is called *loans for use* or *commodatum;*

The second is called *loans for consumption* or simply *loans.* Civ. C. 1875 et seq., 1892 et seq.

Chapter I.

Of Loans for Use, or Commodatum.

Section I.

Of the Nature of Loans for Use.

Art. 1875. A loan for use, or commodatum, is a contract by which one of the parties delivers to the other a thing to be used, on condition that the borrower shall return it after having made use of it. Civ. C. 1243 et seq., 1885.

Art. 1876. This sort of loan is essentially gratuitous. Civ. C. 1105.

Art. 1877. The lender remains the owner of the thing loaned. Civ. C. 1893.

Art. 1878. Everything which is in trade (1) and which is not consumed by use may form the object of such an agreement. Civ. C. 1128, 1892, 1894.

Art. 1879. Agreements which are entered into by way of commodatum extend to the heirs of the person who makes the loan, and to the heirs of the one who borrows.

But if the loan has only been made out of regard to the borrower and to him personally, then his heirs cannot continue to have the enjoyment of the thing loaned. Civ. C. 724, 1122.

Section II.

Of the Obligations of the Borrower.

Art. 1880. The borrower is bound to take care of and preserve the thing loaned in the same way as a prudent owner. He can only use it for the purpose for which it is fitted by its nature or intended by agreement; all of which shall be under penalty of damages, if there is occasion therefore. Civ. C. 1137, 1149, 1723, 1728 et seq., 1927.

Art. 1881. If the borrower uses the thing for another purpose or for a longer time than he ought, he shall be liable for the loss which may have occurred, even accidentally. Civ. C. 618, 1139, 1147 et seq., 1245, 1302 et seq., 1729, 1880, 1883, 1930.

Art. 1882. If the thing loaned is destroyed by an

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(1) The word "trade" must be taken in a broad sense and applies to property belonging to private individuals in contradistinction to public property.

accident from which the borrower might have preserved it by making use of his own thing, or if, being only able to save one of the two, he has given the preference to his own thing, he is liable for the loss of the other. Civ. C. 1137, 1147 et seq., 1927.

Art. 1883. If the thing has been appraised when it was loaned, the loss which happens, even by accident, falls upon the borrower, if there is no agreement to the contrary. Civ. C. 1134, 1148, 1551, 1822, 1851, 1877.

Art. 1884. If the thing has deteriorated solely in consequence of the use for which it has been borrowed and without any laches on the part of the borrower, he is not responsible for the deterioration. Civ. C. 589, 607, 1245, 1382 et seq., 1730, 1732.

Art. 1885. The borrower cannot retain the thing as compensation for what the lender owes him. Civ. C. 1243 et seq., 1291, 1293-2°, 1890 et seq., 1948, 2102-3°.

Art. 1886. If, for the purpose of making use of the thing, the borrower has incurred certain expenses, he is not entitled to the payment thereof. Civ. C. 1136 et seq., 1876, 1890.

Art. 1887. If several persons have borrowed the same thing together, they are jointly and severally liable to the lender. Civ. C. 1200, 1202, 1221-2°-5°, 1222, 1225.

Section III.

Of the Obligations of a Lender for Use.

Art. 1888. A lender cannot take back the thing loaned before the time agreed upon, or if no time has

been agreed upon, until the thing has been used for the purpose for which it was borrowed. Civ. C. 1134, 1185 et seq., 1188, 1889, 1899.

Art. 1889. Nevertheless, if, during that time, or before the borrower has ceased to need the thing, the lender happens to be in pressing and unforeseen want of his thing, the Court may, according to circumstances, compel the borrower to return it to him. Civ. C. 1186, 1761 et seq.

Art. 1890. If, during the continuance of the loan, the borrower has been compelled to incur, for the preservation of the thing, certain extraordinary and necessary expenses and of so urgent a nature that he was not able to notify the lender, the latter shall be bound to reimburse him. Civ. C. 1136 et seq., 1375, 1381, 1877, 1886, 1947, 2102-3°.

Art. 1891. When the thing loaned has such defects that it may cause injury to the person who makes use of it, the lender is responsible if he knew of such defects and did not warn the borrower. Civ. C. 1382 et seq., 1641 et seq., 1721, 1898.

Chapter II.

Of Loans for Consumption or Simple Loans.

Section I.

Of the Nature of Loans for Consumption.

Art. 1892. A loan for consumption is a contract by which one of the parties delivers to the other a certain quantity of things which are consumed by use,

on condition that the latter shall return to him as many of the same kind and quality. Civ. C. 587, 1874, 1980 et seq.

Art. 1893. In consequence of such a loan the borrower becomes the owner of the thing loaned; and its loss falls upon him in whatever manner it may have occurred. Civ. C. 1238, 1877, 1894, 1938, 2279.

Art. 1894. Things which, although of the same kind, differ from each other individually, such as animals, cannot be given by way of loans for consumption: the loan is then for use. Civ. C. 1878, 1896 et seq.

Art. 1895. The liability resulting from a loan of money is always for the numerical sum mentioned in the contract.

If there has been a rise or a fall in the value of money before the time of the payment, the debtor must return the numerical sum loaned and is only bound to return this sum in specie of the currency at the time of payment. Civ. C. 1896 et seq.

Art. 1896. The rule laid down in the foregoing article does not apply, if the loan has been made in bullion.

Art. 1897. If bullion or goods have been loaned, the debtor must always return the same quantity and quality, whatever may be the rise or fall in their value, and he has nothing else to return. Civ. C. 1243 et seq., 1246 et seq.

Section II.

Of the Obligations of the Lender.

Art. 1898. In a loan for consumption the lender

is held liable in the manner laid down in article 1891 for a loan for use.

Art. 1899. The lender cannot claim the return of the things loaned, before the time agreed upon. Civ. C. 1185 et seq., 1244, 1888 et seq., 1902 et seq.

Art. 1900. If no time has been specified for the return, the Judge may grant the borrower a certain delay according to circumstances. Civ. C. 1185 et seq., 1244, 1888, 1901, 1913.

Art. 1901. If it has only been agreed that the borrower shall pay when he can, or when he has the means, the Judge shall fix a time for the payment, according to circumstances. Civ. C. 1244.

Section III.

Of the Obligations of the Borrower.

Art. 1902. The borrower is obliged to return the things loaned in the same quantity and quality and at the time agreed upon. Civ. C. 587, 1185 et seq., 1246 et seq., 1892, 1895 et seq., 1903.

Art. 1903. If it is not possible for him to do so, he is obliged to pay their value, taking into account the time when and the place where the thing was to be returned, according to the agreement.

If the time and place have not been fixed, the payment shall be made according to the value, at the time and at the place where the loan was made. Civ. C. 1247 et seq., 1904.

Art. 1904. (Law of April 7, 1900). If the borrower does not return the things borrowed, or

their value, at the time agreed upon, he owes interest thereon from the day of the demand or of the beginning of the suit. Civ. C. 1149, 1153 et seq., 1905 et seq.

Chapter III.

Of Loans with Interest.

Art. 1905. It is lawful to agree that interest shall be paid on simple loans, either of money, or of goods, or of other personal property. Civ. C. 1152 et seq., 1906 et seq.

Art. 1906. The borrower who has paid interest which was not agreed upon, can neither claim it back nor deduct it from the capital. Civ. C. 1235, 1254, 1376.

Art. 1907. Interest is legal or conventional. Legal interest is fixed by law. Conventional interest can exceed legal interest, whenever the law does not prohibit it.

The rate of conventional interest must be fixed in writing. Civ. C. 1153 et seq.

Art. 1908. A receipt for principal given without reserve as to the interest supposes the payment thereof, and operates as a release therefrom.

Art. 1909. Interest can be stipulated upon a principal of which the lender undertakes not to claim the return.

In such case the loan takes the name of *settlement of an annuity*.

Art. 1910. Such an annuity may be settled in two ways: perpetually, or for life.

Art. 1911. A perpetual annuity is essentially redeemable.

The parties can only agree that the redemption shall not take place before a time which cannot exceed ten years, or without having given the creditor a certain notice in advance, at a time agreed upon between them. Civ. C. 530, 1134, 1187.

Art. 1912. The debtor of a perpetual annuity may be compelled to redeem it:

1° If he ceases to fulfil his obligations during two years;

2° If he fails to furnish to the lender the security promised by the contract. Civ. C. 1184, 1977.

Art. 1913. The capital of a perpetual annuity likewise becomes due in case of bankruptcy or insolvency of the debtor. Civ. C. 1184, 1188.

Art. 1914. The rules relating to life annuities are laid down in the title *Of Contingent Contracts*. Civ. C. 1910, 1964, 1968 et seq.

TITLE ELEVENTH

Of Deposit and Sequestration.

(Passed March 14, 1804; promulgated 24th of same month.)

Chapter I.

Of Deposit in General and of its different Kinds.

Art. 1915. A deposit is in general an act by which a person receives a thing belonging to another person,

on condition of keeping it and of returning it in kind. Civ. C. 1127, 1137, 1932, 2236.

Art. 1916. There are two kinds of deposits: deposits properly so-called, and sequestrations. Civ. C. 1917 et seq., 1955 et seq.

Chapter II.

Of Deposit properly so called.

Section I.

§ 1. *Of the Nature and Essence of Contracts of Deposit.*

Art. 1917. A deposit properly so called is a contract which is essentially gratuitous. Civ. C. 1105, 1928-2°, 1936, 1957.

Art. 1918. Its subject matter can only be personal property. Civ. C. 527 et seq., 1959.

Art. 1919. It is only complete by the actual or fictitious delivery of the thing deposited.

Fictitious delivery is suffiicent when the depositary is already in possession in some other capacity of the thing to be left with him by agreement as a deposit. Civ. C. 1604 et seq.

Art. 1920. Deposits are voluntary or necessary. Civ. C. 1921 et seq., 1949 et seq.

Section II.

Of Voluntary Deposit.

Art. 1921. A voluntary deposit takes place by the reciprocal consent of the person who makes it and

of the person who receives it. Civ. C. 1108 et seq., 1919, 1949.

Art. 1922. A voluntary deposit can only be lawfully made by the owner of the thing deposited, or with his express or tacit consent. Civ. C. 1938.

Art. 1923. (Law of April 1, 1928). A voluntary deposit must be proved by a writing. Oral testimony cannot be received when the amount exceeds five hundred francs. Civ. C. 1326, 1341 et seq., 1347 et seq., 1924, 1950.

Art. 1924. (Law of April 1, 1928). When a deposit exceeds five hundred francs, and is not established by a writing, the person who is attacked as depositary is believed on his declaration, either as to the fact itself of the deposit, or as to the thing which was the object thereof, or as to the fact of its restitution. Civ. C. 1354 et seq., 1357 et seq., 1366.

Art. 1925. A voluntary deposit can only take place between persons who are capable of contracting.

Nevertheless, if a person capable of contracting accepts a deposit made by a person who was incapable, the former is liable for all the obligations of a real depositary, and can be sued by the guardian or administrator of the person who has made the deposit. Civ. C. 1108, 1123 et seq., 1926, 1940 et seq.

Art. 1926. If the deposit has been made by a person who is capable of making it to another who is not, the person who has made the deposit is only entitled to bring an action for the restitution of the thing deposited so long as it exists in the hands of the depositary, or to bring an action for restitution to the extent of the benefit derived by the latter. Civ. C. 1123 et seq., 1241, 1305, 1312, 1925.

Section III.

Of the Obligations of a Depositary.

Art. 1927. A depositary must take the same care of the thing deposited as he does of the things which belong to him. Civ. C. 1137, 1880 et seq., 1928 et seq.

Art. 1928. The provisions of the foregoing article shall be applied more strictly : 1° If the depositary has offered of his own accord to receive the deposit; 2° If he has exacted a salary for looking after the deposit; 3° If the deposit has been made solely in the interest of the depositary; 4° If it has been expressly agreed that the depositary should be liable for every kind of negligence. Civ. C. 1382, 1917.

Art. 1929. A depositary is not in any case answerable for the accidents resulting from superior force, unless a demand had been made upon him to return the thing deposited. Civ. C. 1139, 1147 et seq., 1302 et seq., 1881 et seq., 1934.

Art. 1930. He cannot make use of the thing deposited without the express or implied permission of the depositor. Civ. C. 1881 et seq.

Art. 1931. He shall not attempt to discover what are the things which have been deposited with him, if they have been intrusted to him in a closed box or under a sealed cover.

Art. 1932. The depositary must return the identical thing which he has received.

For instance a deposit of sums of money must be returned in the same currency in which it was made, whether their value has increased or decreased. Civ. C. 1293, 1895 et seq., 1933 et seq.

Art. 1933. A depositary is only bound to return the thing deposited in the condition in which it is at the time of restitution. Deteriorations which do not result from any act of his shall be borne by the depositor. Civ. C. 1245, 1302, 1929.

Art. 1934. A depositary from whom a thing has been taken away by superior force and who has received the price thereof or something in its place, must return what he has received in exchange for it. Civ. C. 1303, 1929, 1935.

Art. 1935. The heir of the depositary who has sold in good faith the thing which he did not know to be a deposit is only bound to return the price which he has received, or to assign his cause of action against the purchaser, if he has not received the price. Civ. C. 1380 et seq., 1599, 2268, 2279.

Art. 1936. If the thing deposited has produced a revenue which has been collected by the depositary, he is obliged to return the same. He owes no interest upon the money deposited, except from the day upon which a demand has been made upon him to return the money. Civ. C. 549, 1139, 1153, 1932.

Art. 1937. A depositary must only return the thing deposited to the person who has intrusted it to him, or to the person in whose name the deposit has been made, or to the one who has been appointed to receive it. Civ. C. 1239, 1938.

Art. 1938. He cannot compel the person who has made the deposit to prove that he was the owner of the thing deposited.

Nevertheless, if he discovers that the thing has been stolen and who is the real owner, he must notify the latter of the deposit which has been made and demand

that he shall claim it within a fixed and sufficient time. If the person to whom the notice is given fails to claim the deposit, the depositary is lawfully released by making delivery to the person from whom he has received it. Civ. C. 1922, 1937, 1944, 2279 et seq.

Art. 1939. In case of natural *or civil death* (1) of the person who has made the deposit, the thing deposited can only be returned to his heir.

If he has several heirs, it must be returned to each of them according to their share and portion.

If the thing deposited cannot be divided, the heirs must agree between themselves to receive it. Civ. C. 23, 25, 724, 873, 1122, 1217, 1220 et seq.

Art. 1940. If the status of the person who has made the deposit has changed, for instance, if a wife, independent at the time the deposit was made, has since married, and is under the power of a husband; if a person of full age who has made a deposit is interdicted; in all such cases and others of the same kind, the deposit can only be returned to the person who has the administration of the rights and property of the depositor. Civ. C. 1925, 1940.

Art. 1941. If the deposit has been made by a guardian, a husband, or an administrator, in one of such capacities, it can only be returned to the person whom such guardian, husband, or administrator represented, if their management or administration has come to an end. Civ. C. 1925, 1940.

Art. 1942. If the contract of deposit specifies the place where the restitution shall be made, the depositary is obliged to take the thing deposited to such place.

(1) Civil death was abolished by the Law of May 31, 1854.

If the transportation has caused expense, it shall be paid by the depositor. Civ. C. 1247 et seq. 1608, 1943.

Art. 1943. If the contract does not specify the place of restitution, such restitution shall be made at the very place of the deposit. Civ. C. 1247, 1609, 1942.

Art. 1944. The deposit must be returned to the depositor as soon as he claims it, even if the contract has fixed a special time for the restitution, unless there is an attachment or an injunction in the hands of the depositary which prevents the restitution or the removal of the thing deposited. Civ. C. 1139, 1186, 1242, 1888 et seq., 1960.

Art. 1945. A depositary who has acted in bad faith is deprived of the right of making an assignment of his property. Civ. C. 1265 et seq.

Art. 1946. All the obligations of the depositary cease, if he happens to discover and to prove that he is himself the owner of the thing deposited. Civ. C. 1300 et seq., 2279 et seq.

Section IV.

Of the Obligations of the Person by whom the Deposit has been made.

Art. 1947. A person who has made a deposit is obliged to repay to the depositary the expenses which the latter has incurred for the preservation of the thing deposited, and to make good to him all the losses which the deposit may have occasioned him. Civ. C. 1137, 1375, 1381, 1886, 1890, 1948, 2080, 2102-3°.

Art. 1948. A depositary may retain the deposit until full payment of what is due to him on account of such deposit. Civ. C. 1293-2°, 2073 et seq., 2082.

Section V.

Of Necessary Deposits.

Art. 1949. A necessary deposit is one which had to be made owing to some accident, such as a fire, destruction, pillage, shipwrek or other unforeseen events. Civ. C. 1920, 1950 et seq.

Art. 1950. (Law of April 1, 1928). Proof by witnesses is allowed in case of a necessary deposit, even if the amount involved exceeds five hundred francs. Civ. C. 1341, 1348-2°, 1923.

Art. 1951. Necessary deposits are moreover governed by all the rules previously mentioned. Civ. C. 1927 et seq.

Art. 1952. Innkeepers or hotel-keepers are responsible as depositaries for the effects brought by the traveller stopping with them; a deposit of effects of this kind shall be considered as a necessary deposit. Civ. C. 1384, 1782 et seq., 2102-5°;

Art. 1953. They are liable if the effects of the traveller are stolen or damaged, whether the theft has been committed or the damage caused by the servants and employees of the hotel, or by strangers going to and fro in the hotel.

(Law of April 8, 1911). This responsibility is limited to one thousand francs for coins, securities, deeds, jewelry and articles of value of whatever kind, which have not been actually deposited in the

hands of the innkeepers or hotel-keepers. Civ. C. 1384;

Art. 1954. They are not responsible for thefts committed by armed force or any other superior force. Civ. C. 1148.

Chapter III.

Of Sequestration.

Section I.

Of various Kinds of Sequestration.

Art. 1955. Sequestration is either conventional or judicial. Civ. C. 1956 et seq.

Section II.

Of Conventional Sequestration.

Art. 1956. Conventional sequestration is a deposit made by one or several persons of a thing in dispute in the hands of a third party who binds himself to return it, after the controversy is over, to the person who shall be held by a Court to be entitled to it. Civ. C. 602.

Art. 1957. Sequestration need not be gratuitous. Civ. C. 1917.

Art. 1958. When it is gratuitous it is governed by the rules of a deposit properly so called, subject to the distinctions hereafter mentioned. Civ. C. 1919 et seq.

Art. 1959. Sequestration may apply not only to personal effects but even to real estate. Civ. C. 1918.

Art. 1960. A depositary of a thing sequestrated

cannot be released before the controversy is ended, except by consent of all the interested parties, or for a cause which a judgment has declared to be legitimate. Civ. C. 1944.

Section III.

Of Sequestration or Judicial Deposit.

Art. 1961. Sequestration may be ordered by a Court :

1° In case of personal property of a debtor which has been attached;

2° In case the ownership or possession of real estate or personal property is contested by two or more persons;

3° In case the debtor offers certain things to be released. Civ. C. 602, 1257 et seq., 1264;

Art. 1962. The appointment of a judicial custodian produces reciprocal obligations between the attaching creditor and the custodian. The custodian must give to the things attached the care of a prudent owner for their preservation.

He must produce them for the purpose of being sold if the attaching creditor has given a release, or he must produce them to the party against whom an execution has been issued, if the attachment has been vacated.

It is incumbent upon the attaching creditor to pay to the custodian the salary fixed by law. Civ. C. 1137 et seq., 1927 et seq., 1947 et seq.

Art. 1963. A judicial sequestrator shall be either a person agreed upon by the interested parties be-

tween themselves, or a person, appointed by the Court of its own accord.

In both cases the person to whom the thing is intrusted is subject to all the obligations resulting from a conventional sequestration. Civ. C. 1925, 1956 et seq.

TITLE TWELFTH.

Of Contingent Contracts.

(Passed March 10, 1804; promulgated 20th of same month.)

Art. 1964. A contingent contract is a reciprocal agreement of which the effects as to its advantages and losses depend upon an uncertain event, either with respect to all the parties or one or several of them.

Such are:

Insurance contracts;
Loans on bottomry;
Gaming and betting;
Annuities.

The first two are governed by maritime law. Civ. C. C. 1104-2°, 1965 et seq., 1968 et seq.

Chapter I.

Of Gaming and Betting.

Art. 1965. The law does not grant any cause of action for a gaming debt, or for the payment of a bet. Civ. C. 1967.

Art. 1966. Games which tend to help training in the use of arms, foot races or horse or chariot races, tennis and other games of the same kind which develop skill and physical exercise, are excepted from the foregoing provision.

Nevertheless, the Court may dismiss the suit, when the amount appears excessive.

Art. 1967. In no case can the loser recover what he has voluntarily paid, unless there has been fraud, deceit or swindling on the part of the winner. Civ. C. 1109, 1116 et seq., 1235, 1378 et seq.

Chapter II.

Of Annuities.

Section I.

Of the Conditions required for the Validity of the Contract.

Art. 1968. An annuity may be granted for a valuable consideration such as a sum of money, or for personal property of value, or for real estate. Civ. C. 529, 588, 1104, 1106, 1909 et seq., 1964.

Art. 1969. It can also be granted without consideration by donation inter vivos, or by will. It must then be made in the form required by law. Civ. C. 610, 893 et seq., 931 et seq., 967, 1015-2° 1091 et seq., 1970 et seq., 1981.

Art. 1970. In the case of the foregoing article

a life annuity can be reduced, if it exceeds the portion of which a person has the right to dispose : it is void, if it has been made in favor of a person incapable of receiving it. Civ. C. 725 et seq., 843 et seq., 906 et seq., 913 et seq., 917 et seq., 920 et seq., 1098 et seq.

Art. 1971. An annuity may be granted either for the life of the person who has paid the price thereof, or for the life of a third party who has no right to its enjoyment.

Art. 1972. It can be granted for one or more lives.

Art. 1973. It can be granted in favor of a third party, although the price has been paid by another person.

In the latter case, it is not subject to the rules applying to donations, although it partakes of the character of a gift; except in the cases of reduction and avoidance mentioned in article 1970. Civ. C. 1121, 1969, 1981.

Art. 1974. All contracts for an annuity for the life of a person who was dead at the time the contracts were made, are inoperative. Civ. C. 1040, 1131.

Art. 1975. The same rule applies in case of a contract by which an annuity has been created for the life of a person suffering from an illness of which he died, within twenty days from the date of the contract. Civ. C. 1974.

Art. 1976. A life annuity can be granted at the rate the contracting parties choose to fix. Civ. C. 1905, 1907.

Section II.

Of the Effects of the Contract between the Contracting Parties.

Art. 1977. The person in whose favor a life annuity has been granted for a consideration may apply for the cancellation of the contract, if the grantor does not furnish the security stipulated for its fulfilment. Civ. C. 1184, 1188, 2131.

Art. 1978. The mere failure to pay the interest of the annuity does not in itself give the right to the person in whose favor it has been granted to apply for the repayment of the capital, or to regain possession of the property conveyed by him : he only has the right to attach the property of his debtor and to have it sold, and to obtain by judgment or consent that a sufficient sum be invested, out of the proceeds of the sale, for the payment of the interest. Civ. C. 1144, 1184, 1654, 1912 et seq., 2092 et seq., 2204 et seq.

Art. 1979. The grantor cannot exonerate himself from the payment of the annuity by offering to return the principal and by abandoning the interest paid : he is bound to pay the interest during the whole life of the person or of the persons to whom the annuity has been granted, whatever may be the duration of the life of such persons and however burdensome the payment of the annuity may have become. Civ. C. 1134, 1911, 1912, 1964.

Art. 1980. The annuity is only due to the annuitant in proportion to the number of days he has lived.

Nevertheless, if it has been stipulated that it is to be paid in advance, the instalment which should have

been paid becomes due from the day set for the payment. Civ. C. 586, 588, 1186.

Art. 1981. It may not be stipulated that an annuity for life cannot be attached, unless it has been created without consideration. Civ. C. 1969 et seq., 2092.

Art. 1982. A life annuity does not cease *upon the civil death* (1) of the annuitant; the payment shall be continued during his natural life.

Art. 1983. The annuitant of an annuity can only claim interest by proving his existence, or the existence of the person for whose life it has been granted. Civ. C. 135, 1315, 2277 et seq.

TITLE THIRTEENTH.

Of Powers of Attorney.

(Passed March 10, 1804; promulgated 20th of same month.)

Chapter I.

Of the Nature and Form of Powers of Attorney.

Art. 1984. A procuration or power of attorney is an instrument by which one person gives to another the power to do something for the principal and in his name.

The contract is concluded by the mere acceptance

(1) Civil death having been abolished by the Law of 31 May, 1854, this article has ceased to apply.

of the attorney-in-fact. Civ. C. 1101 et seq., 1108 et seq., 1119 et seq., 1372 et seq..

Art. 1985. A power of attorney can be given either by a public instrument, or by a writing under private signature, even by letter. It can also be given verbally; but the proof thereof by witnesses is only admitted in accordance with the title *Of Contracts or Conventional Obligations in General.*

The acceptance of the power may only be tacit and result from the fact that the attorney-in-fact has acted thereunder. Civ. C. 1325, 1338, 1341 et seq., 1347, 2004.

Art. 1986. An agency under a procuration is gratuitous, unless there is a stipulation to the contrary. Civ. C. 1710, 1992-2°.

Art. 1987. It is either special and for one matter, or for certain matters only, or general and for all the affairs of the principal. Civ. C. 1988 et seq.

Art. 1988. A power of attorney made out in general terms only applies to acts of management.

If it is intended to sell or mortgage, or do other things connected with ownership, express authority must be given. Civ. C. 933, 1239, 1258, 1429 et seq., 2129.

Art. 1989. An attorney-in-fact cannot do anything beyond what is expressed in his procuration : the power to compromise does not include the power to submit to arbitration. Civ. C. 1372, 1997, 1998, 2003 et seq., 2044.

Art. 1990. Women and emancipated minors can be selected as attorneys-in-fact; but the principal has no cause of action against the attorney-in-fact who is a minor, except in accordance with the general rules

relating to the obligations of minors, nor against a married woman who has accepted a power without the consent of her husband, except in accordance with the rules established under the title *Of Marriage Contracts and of the Respective Rights of Husband and Wife.* Civ. C. 217, 219, 481 et seq., 1029 et seq., 1124 et seq., 1305 et seq., 1312, 1420 et seq., 1426.

Chapter II.

Of the Obligations of the Attorney-in-fact.

Art. 1991. An attorney-in-fact is bound to perform his duties so long as his power lasts, and he is responsible for the damages which might result from his failure to act.

He is also bound to finish the matter commenced at the death of the principal, if a delay would be prejudicial. Civ. C. 1142, 1146, et seq., 1149, 1372 et seq., 2003-3°, 2007 et seq.

Art. 1992. An attorney-in-fact is liable not only in case of fraud, but also for negligence committed in his management.

Nevertheless, the liability in case of negligence is enforced less rigorously against a person who has acted without compensation under a power than against one receiving a salary. Civ. C. 1116, 1374, 1383, 1596, 1850, 1928.

Art. 1993. Every attorney-in-fact is bound to render an account of his management and to answer to his principal for everything he has received by virtue of his power, even if what he has received was not due to the principal. Civ. C. 1376, 1996.

Art. 1994. An attorney-in-fact is responsible for the person he has substituted in his management: 1° When he has not received the power to substitute; 2° When this power has been conferred without naming the person, and when the person selected by him was notoriously unfit and insolvent.

In all cases a principal can act directly against the person whom the attorney-in-fact has substituted. Civ. C. 1384, 1735, 1798.

Art. 1995. When there are several attorneys-in-fact or agents appointed by the same instrument, there is no joint liability between them, unless it is therein expressed. Civ. C. 1033, 1202, 2002.

Art. 1996. An attorney-in-fact owes interest on the sums which he has applied to his own use from the time he has made use of them; and on those remaining in his hands from the time a demand has been made upon him. Civ. C. 1139, 1153, 1907, 1993, 2001.

Art. 1997. An attorney-in-fact who has given to the person with whom he deals in such capacity sufficient knowledge of his powers, is not liable by way of warranty, if such person has exceeded them, unless he has personally assented thereto. Civ. C. 1120, 1989, 1998.

Chapter III.

Of the Obligations of the Principal.

Art. 1998. A principal is bound to carry out the engagements contracted by the attorney-in-fact, in accordance with the powers which he has given him.

He is only liable for what may have been done beyond them, in case of his express or tacit ratification. Civ. C. 1120,1338, 1375, 1989, 1997.

Art. 1999. A principal must repay to the attorney-in-fact the advances and disbursements made by him while acting under the power, and he must pay him his salary when it has been promised.

If the attorney-in-fact cannot be charged with any negligence, the principal cannot refuse to make these reimbursements and payments, even if the matter has not been successful, and he cannot have the amount of such expenses or advances reduced, on the ground that they might have been less. Civ. C. 1375, 1383, 1992, 2102-3°.

Art. 2000. A principal must also make good the losses which the attorney-in-fact has sustained in consequence of his management, when he cannot be charged with carelessness. Civ. C. 1375, 1947.

Art. 2001. Interest on the advances made by the attorney-in-fact is due to him by the principal, from the time these advances are proved to have been made. Civ. C. 1153 et seq., 1996.

Art. 2002. When an attorney-in-fact has been appointed by several persons for a common business, each one of them is jointly and severally liable towards him, for all the consequences resulting from the power. Civ. C. 1200 et seq., 1222 et seq., 1995, 2030.

Chapter IV.

Of the Different Ways in which a Power of Attorney comes to an End.

Art. 2003. A power of attorney comes to an end:
By the revocation of the attorney-in-fact;
By his renunciation of the power;
By the natural or civil death (1), the interdiction or the insolvency, either of the principal or of the attorney-in-fact. Civ. C. 23, 25, 489, 1373, 1856, 1991, 2005 et seq., 2007 et seq.

Art. 2004. A principal can revoke his power of attorney, whenever he chooses, and compel the attorney-in-fact, if necessary, to return to him, either the writing under private signature which contains it, or the original power in public form, if such original has been delivered, or the certified copy, if the original has been kept. Civ. C. 1282 et seq.

Art. 2005. A revocation, of which notice has been given to the attorney-in-fact alone, cannot be set up against third parties who have had dealings with him, without knowing of such revocation, but the principal has his remedy against the attorney-in-fact. Civ. C. 1165, 1991.

Art. 2006. The appointment of a new attorney-in-fact for the same business is equivalent to a revocation of the previous one, from the day upon which the latter has been given notice. Civ. C. 2005.

Art. 2007. An attorney-in-fact may renounce the power, by giving notice of his renunciation to the principal.

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(1) Civil death was abolished by the Law of 31st May, 1854.

Nevertheless, if the renunciation is prejudicial to the principal, he must be compensated by the attorney-in-fact, unless it is impossible for the latter to continue to act under the power, wihout suffering himself a considerable loss. Civ. C. 1146 et seq., 1372 et seq., 1382, 1991, 2010.

Art. 2008. If an attorney-in-fact has no knowledge of the death of the principal or of one of the other causes which make a power come to an end, what he may have done in ignorance thereof is valid. Civ. C. 1991, 2010.

Art. 2009. In the foregoing cases the engagements contracted by the attorney-in-fact shall be carried out with respect to third parties who are in good faith. Civ. C. 2005.

Art. 2010. In case of the death of the attorney-in-fact, his heirs must give notice to the principal and attend, in the meantime, to what is required in the interest of the latter, as circumstances may demand. Civ. C. 419, 724, 1373, 1991.

TITLE FOURTEENTH

Of Security.

(Passed February 14, 1804; promulgated 24th of same month.)

Chapter I.

Of the Nature and Extent of Security.

Art. 2011. A person who answers as surety for an obligation, undertakes with respect to the creditor to fulfil such obligation, if the debtor does not fulfil it himself. Civ. C. 963, 1105, 2021 et seq., 2049 et seq.

Art. 2012. Security can only be given for an obligation which is valid.

One may, nevertheless, answer as surety for an obligation, even if it can be annulled, for reasons which are purely personal to the debtor, for instance, in case of minority. Civ. C. 225, 1124 et seq., 1208, 2036.

Art. 2013. The security cannot exceed what is due by the debtor, nor be given under more rigorous conditions.

It can be given for a part only of the debt, and under less rigorous conditions.

The security which exceeds the debt or which is given under more rigorous conditions is not void: it shall only be reduced to the amount of the principal obligation. Civ. C. 1152.

Art. 2014. A person may become surety without being authorized by the individual for whom he binds himself, and even without his knowledge.

One may also become surety, not only for the principal debtor, but also for the person who has given security for him. Civ. C. 1105, 1120 et seq., 1236, 2028 et seq., 2043.

Art. 2015. Security cannot be presumed; it must be expressly given and it cannot be extended beyond the limits within which it has been given. Civ. C. 1315, 1341 et seq., 1353, 1740, 2013.

Art. 2016. The security given in an indefinite manner for a principal obligation extends to all the accessories of the debt, even to the expenses connected with the first demand for payment, and to those subsequent to the notice given to the surety. Civ. C. 1740, 2013, 1615, 1692, 2015, 2025 et seq.

Art. 2017. The engagements taken by sureties extend to their heirs, *with the exception of execution against the person*(1), if the engagement was such that the surety was bound thereto. Civ. C. 724, 873, 1122, 1220 et seq., 2040, 2060-5°, 2063.

Art. 2018. A debtor who is obliged to give security must furnish a surety who has the capacity to bind himself, who has sufficient property to answer for the effects of the obligation, and of whom the domicile is within the district of the Royal Court (*Court of Appeals*) where the security is to be given. Civ. C. 2019 et seq., 2023, 2040.

Art. 2019. The solvency of a surety is only determined by the real estate which he owns, except in commercial matters or when the debt is small.

Real estate which is in dispute, or which would be too difficult to reach by way of a seizure on account of its remoteness, shall not be taken into consideration. Civ. C. 2018, 2021 et seq., 2040.

Art. 2020. When a surety voluntarily accepted by a creditor or by the Court afterwards becomes insolvent, a new surety shall be furnished.

An exception, however, is made to this rule, if the surety has been selected by an agreement in which the creditor insisted upon having a certain person as surety. Civ. C. 1134, 1276, 2131.

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(1) Execution against the person was abolished in civil and commercial matters by the law of 22nd July 1867.

Chapter II.

Of the Effects of Security.

Section I.

Of the Effects of Security between Creditor and Surety.

Art. 2021. A surety is only bound towards the creditor to pay him when the debtor fails to do so, and the latter's property must previously be seized and realized, unless the surety has renounced the benefit of seizure, or unless he has bound himself jointly and severally with the debtor; in which case the effects of his undertaking are governed by the principles which have been laid down for debts jointly and severally due. Civ. C. 930, 1200 et seq., 1216, 1666, 2022 et seq., 2042 et seq., 2170 et seq.

Art. 2022. A creditor is only obliged to seize and realize the property of his principal debtor, when the surety demands it, upon the first proceedings instituted against him. Civ. C. 2023 et seq.

Art. 2023. A surety who demands the seizure must indicate to the creditor the property of the principal debtor, and advance enough money to have the property seized and realized.

He is not obliged to indicate the property of the principal debtor situated outside of the district of the Royal Court (*Court of Appeals*) of the place where the payment is to be made, nor the property in dispute, nor the property mortgaged for the debt which is no longer in the possession of the debtor. Civ. C. 1247, 2019-2°, 2034, 2170 et seq.

Art. 2024. Whenever a surety has given the designation of the property, as authorized by the foregoing article, and has furnished sufficient funds to have the property seized and realized, the creditor is liable towards the surety, to the extent of the property pointed out, for the insolvency of the principal debtor which has occurred, in consequence of his failure to institute proceedings. Civ. C. 2026 et seq.

Art. 2025. When several persons have become sureties for the same debtor and the same debt, each one is liable for the whole debt. Civ. C. 1200 et seq., 1287, 2026 et seq., 2033.

Art. 2026. Nevertheless, each one of them may demand that the creditor should previously divide his action and limit it to the part and portion due by each surety, unless the surety has renounced the right of division.

If, at the time when one of the sureties has had the division made, some of them were insolvent, such surety is liable for the shares of those who are insolvent proportionately; but no claim can be made against him for the shares of those who have become insolvent since the division. Civ. C. 1203, 1210, 1217, 1220 et seq., 2020, 2027.

Art. 2027. If a creditor has divided his action of his own accord and voluntarily, he must stand by the division, even if there were insolvent sureties, previously to the time when he consented to do so. Civ. C. 1210 et seq., 2020, 2024, 2026.

Section II.

Of the Effects of Security between Debtor and Surety.

Art. 2028. A surety who has paid has his remedy against the principal debtor, whether the security has been given with or without the knowledge of the debtor.

The remedy exists as well with regard to the principal as to the interest and costs : nevertheless, the surety only has a claim for the expenses he has incurred, since he has given notice to the principal debtor of the proceedings instituted.

He also has a claim for damages and interest, according to circumstances. Civ. C. 1149, 1236, 1251 et seq., 1375, 1999 et seq., 2014, 2016, 2031 et seq.

Art. 2029. A surety who has paid the debt is subrogated to all the rights which the creditor had against the debtor. Civ. C. 1236, 1251-3°, 1252, 2028, 2037.

Art. 2030. When several principal debtors are jointly and severally liable for the same debt, the surety who has answered for all of them, has against each one of them, a claim for the repayment of everything he has paid. Civ. C. 1200, 1203, 1214, 2002, 2025, 2033.

Art. 2031. A surety who has already paid has no claim against the principal debtor who has paid a second time, when he has not notified the latter of the payment made by him; but the surety has a claim for recovery against the creditor.

When a surety has paid without having been sued and without giving notice to the principal debtor,

he has no claim against such debtor, in case the latter would have had the means to defeat the claim at the time of payment; but the surety has a claim for recovery against the creditor. Civ. C. 1235, 1377 et seq.

Art. 2032. A surety, even before paying, can proceed against the debtor to be indemnified:

1° When such surety has been sued in Court for payment;

2° When the debtor has become bankrupt or is insolvent;

3° When the debtor had agreed to give him a release at the end of a certain time;

4° When the debt has become due by the expiration of the time for which it had been contracted;

5° At the end of ten years, when no time has been specified for the expiration of the principal obligation, unless the same is one which by its nature cannot expire before a fixed time, such as a guardianship. Civ. C. 508, 1185 et seq., 1188, 2039.

Section III.

Of the Effects of Security between Co-Sureties.

Art. 2033. When several persons have given security for the same debtor in respect of the same debt, the surety who has paid the debt has a claim against the other sureties, for the share and portion of each of them.

But this remedy only exists when the surety has paid in one of the cases mentioned in the foregoing article. Civ. C. 1200 et seq., 1214, 1251-3°, 1252, 2025 et seq., 2032.

Chapter III.

Of the Expiration of Security.

Art. 2034. The obligation which results from giving security, expires by the same causes as other obligations. Civ. C. 1234 et seq., 1281, 1287 et seq., 1294, 1301, 1365, 2250.

Art. 2035. The merger which takes place in the person of the principal debtor and of his surety, when the one becomes the heir of the other, does not put an end to the cause of action of the creditor against the person who has given security for the surety. Civ. C. 724, 1234, 1300 et seq., 2014, 2043.

Art. 2036. A surety may set up against the creditor all the exceptions which appertain to the principal debtor, and which are inherent in the debt.

But he cannot set up the exceptions which are purely personal to the debtor. Civ. C. 1124, 1166, 1208, 1287 et seq., 1294 et seq., 1301, 1365, 2012 et seq.

Art. 2037. A surety is released when the subrogation to the rights, mortgages and preferences of the creditor can no longer take place in favor of the surety, owing to an act of such creditor. Civ. C. 1251-3°, 1832, 2029.

Art. 2038. The voluntary acceptance, made by a creditor, of real estate or of a thing, whatever it may be, in payment of the principal debt, releases the surety, even if the creditor should afterwards be evicted therefrom. Civ. C. 1234, 1238, 1243, 1271-1°, 1599, 1626.

Art. 2039. A simple extension granted by a

creditor to the principal debtor does not release the surety, who may in such case proceed against the debtor to compel him to pay. Civ. C. 1185 et seq., 1740, 2032-4°, 2037.

Chapter IV.

Of Legal and Judicial Security.

Art. 2040. Whenever a person is bound by law or by judgment to furnish security, the security offered must fulfil the conditions specified in articles 2018 and 2019.

In case of judicial security, the surety must also be amenable to execution against the person. Civ. C. 16, 120, 123 et seq., 601, 626, 771, 807, 1518, 1653, 2185.

Art. 2041. A person who cannot find a surety can give instead a sufficient pledge as security. Civ. C. 2072 et seq.

Art. 2042. A judicial surety cannot ask that the property of the principal debtor be seized and realized. Civ. C. 2021 et seq., 2043.

Art. 2043. A person who has merely given security for a judicial surety, cannot ask that the property of the principal debtor and of the surety be seized and realised. Civ. C. 2014, 2021, 2035.

TITLE FIFTEENTH.

Of Compromises.

(Passed March, 20, 1804; promulgated 30th of same month.)

Art. 2044. A compromise is a contract by which the parties end a controversy which has arisen, or prevent a controversy from arising.

Such a contract must be made in writing. Civ. C. 888, 1102, 1104, 1106, 1325, 1341, 1347, 1348.

Art. 2045. In order to compromise, one must have the right to dispose of the things included in the compromise.

A guardian can only compromise for a minor or an interdicted person in accordance with article 467 of the title *Of Minority, Guardianship and Emancipation*, and he can only compromise with a minor who has become of age with respect to the guardianship accounts, in accordance with article 472 of the same title.

Districts and public establishments can only compromise with the express consent of the *King*. Civ. C. 128, 217 et seq., 467, 472, 481 et seq., 484, 487, 499, 502, 509, 513, 1123 et seq., 1449, 1538, 1554, 1576, 1595, 1989.

Art. 2046. A compromise may be made with reference to civil interests resulting from a misdemeanor.

A compromise does not prevent the Public Prosecutor instituting proceedings. Civ. C. 6.

Art. 2047. A person may add to a compromise a

stipulation imposing a penalty upon the party who fails to carry it out. Civ. C. 1226 et seq.

Art. 2048. Compromises are confined to their object : a renunciation therein contained of all rights, causes of action and claims, only applies to what relates to the controversy which has given rise thereto. Civ. C. 1156, 1163, 2049, 2057.

Art. 2049. Compromises only settle the controversies connected therewith, whether the parties have expressed their intention in special or general terms, or whether such intention appears as a necessary consequence of what is expressed. Civ. C. 1156, 1175, 2048, 2057.

Art. 2050. If a person who has made a compromise as to a right which belongs to him individually, acquires thereafter a similar right, through another person, he is not bound by the compromise previously made, with respect to the right which he has since acquired.

Art. 2051. A compromise made by one of the interested parties does not bind the others, and cannot be set up against them. Civ. C. 1121, 1165 et seq., 1208, 1285, 2036.

Art. 2052. Compromises produce between the parties the effect of a final judgment.

They cannot be attacked on account of an error of law, nor on account of inadequacy. Civ. C. 888, 1110, 1118, 1304 et seq., 1313, 1351, 2053 et seq., 2056.

Art. 2053. Nevertheless, a compromise can be set aside, when there is an error as to the person or as to the matter in dispute.

It can also be set aside in all cases in which there is fraud or duress. Civ. C. 1109 et seq., 1116 et seq., 1304 et seq., 2057 et seq.

Art. 2054. An action to set aside a compromise also lies when it has taken place in consequence of an instrument which was void, unless the parties have expressly taken into account the cause of avoidance. Civ. C. 1110, 1131, 1338.

Art. 2055. A compromise based on documents which have since been admitted to be forgeries, is wholly void. Civ. C. 1131, 2053, 2057.

Art. 2056. A compromise as to a suit which has come to an end owing to a final judgment, of which the parties or one of them had no knowledge, is void.

If the judgment which was unknown to the parties is subject to appeal, the compromise shall be valid. Civ. C. 1110, 1131, 1351, 2053.

Art. 2057. When parties have made a general compromise covering all outstanding matters between them, the instruments which were then unknown to them and which have been subsequently discovered, do not constitute a cause for rescission, unless they had been withheld through the act of one of the parties;

But the compromise shall be void, if it only referred to a thing to which the newly-discovered documents show that one of the parties had no right. Civ. C. 1382, 2055.

Art. 2058. Errors of calculation in a compromise must be corrected. Civ. C. 2053.

TITLE SIXTEENTH.

Of Execution against the Person in Civil Matters (1).

(Passed February 13, 1804; promulgated 23rd of same month.)

Art. 2059. *Execution against the person takes place in civil matters, in case of stellionate.*

Stellionate occurs :

When a person sells or mortgages real estate which he knows not to belong to him.

When a person represents as being unencumbered property which is mortgaged, or declares that the mortgages are of less amount than those encumbering the property.

Art. 2060. *Execution against the person takes place also :*

1° *In case of a necessary deposit;*

2° *In case of restitution, ordered by the Court, for abandonment of an estate of which the owner has been deprived by violence; for the return of the revenue thereof collected during illegal possession, and for the payment of damages awarded to the owner;*

3° *For restitution of funds placed in the hands of public officers appointed therefor;*

4° *For the production of things deposited with receivers, commissaries or other custodians;*

5° *Against judicial sureties and against sureties of*

(1) Execution against the person in civil and commercial matters and against foreigners was abolished by the law of the 22nd July, 1867.

persons liable to arrest, when they have submitted to such arrest;

6° *Against all public officers, for the production of the originals kept by them, when it is ordered;*

7° *Against notaries, solicitors and bailiffs, for the restitution of documents confided to them and of funds collected by them for clients in their professional capacity.*

Art. 2061. *Those who have been ordered by a final judgment in an action for trover to vacate an estate and who refuse to obey, may be compelled to do so by execution against the person, ordered by a second judgment, fifteen days after service of the first judgment, upon the person or at his domicile.*

If the property or estate is at a distance of more than five myriametres from the domicile of the person against whom the judgment has been given, one day shall be added to the period of fifteen days for each five myriametres.

Art. 2062. *Execution against the person cannot be ordered against farmers for the payment of rents of rural property, unless it has been expressly stipulated in the lease.*

Nevertheless, execution against the person can be issued against farmers and setttlers paying in kind, if they fail at the end of the lease to produce the cattle, the seeds, and the agricultural implements which have been intrusted to them, unless they prove that they are not accountable for the loss of these things.

Art. 2063. *Outside of the cases mentioned in the foregoing articles or which might come under a new special law, Courts are not allowed to order execution against the person; and notaries and clerks of Courts*

shall not be allowed to receive instruments in which it has been stipulated, and French citizens shall not be allowed to execute such instruments, even if they are executed in a foreign country: all of which shall be observed under penalty of avoidance, together with costs, damages and interest.

Art. 2064. *Even in the cases above set forth, no execution against the person shall be ordered against minors.*

Art. 2065. *Such execution cannot be ordered for a sum less than three hundred francs.*

Art. 2066. *It shall not be ordered against persons over seventy years of age, nor against married or unmarried women, except in case of stellionate.*

It is sufficient that the seventieth year should have commenced to be entitled to the favor granted to septuagenarians.

Execution against the person for stellionate shall only be issued against married women during the marriage, when there is a separation of property or when they have property of which they have reserved to themselves the free administration, and on account of engagements relating to such property.

Married women, when there is community of property, who have bound themselves jointly and severally with their husbands cannot be considered guilty of stellionate on account of such agreements.

Art. 2067. *Execution against the person, even in cases in which it is authorized by law, can only be issued by virtue of a judgment.*

Art. 2068. *An appeal does not stay an execution against the person ordered by a judgment which gives*

the right to issue execution provisionally, if security is furnished.

Art. 2069. *Issuing execution against the person does not prevent or stay proceedings or execution against the property.*

Art. 2070. *No changes are made in the special laws allowing execution against the person in commercial matters, nor in the laws relating to misdemeanors, nor in those relating to the administration of public funds.*

TITLE SEVENTEENTH.

Of Pledges.

(Passed March 16, 1804; promulgated 26th of same month.)

Art. 2071. A pledge is an agreement by which a debtor hands over to his creditor a thing as security for a debt. Civ. C. 1915, 2041, 2077.

Art. 2072. A pledge of personal property is called a *pawn.*

A pledge of real estate is called *antichresis.* Civ. C. 2073 et seq., 2085 et seq.

Chapter I.

Of Pawns.

Art. 2073. A pawn confers upon the creditor the right to cause himself to be paid out of the thing pawned, by way of privilege and in preference to other creditors. Civ. C. 2079, 2095, 2102-2°.

Art. 2074. (Law of April 1, 1928). This privilege only exists if there is an instrument, in public form or under private signature, duly registered, containing a declaration as to the sum due, and also as to the kind and nature of the things pawned or an annexed schedule of their quality, weight and measure.

However, the instrument need only be reduced to writing and registered in a matter of which the value exceeds five hundred francs. Civ. C. 1315, 1317, 1325, 1328, 1341 et seq., 1347, 2075 et seq.

Art. 2075. The privilege mentioned in the foregoing article only applies to incorporeal personal property, such as claims to personal property, in case a public instrument or one under private signature has been made, likewise registered, which has been served upon the debtor of the claim pledged. Civ. C. 1315, 1317 et seq., 1325, 1607, 1690, 2076, 2081.

Art. 2076. In all cases the privilege with respect to the pawn only subsists if the pawn has been placed and remains in the possession of the creditor, or of a third person accepted by the parties. Civ. C. 1286, 1606 et seq., 1689, 2102-1°-2°-3°-5°, 2119, 2279.

Art. 2077. A pawn may be given by a third party for the debtor. Civ. C. 1119 et seq., 1236, 1249 et seq., 1271-2°, 1372 et seq., 2014, 2090.

Art. 2078. A creditor cannot, in case of nonpayment, dispose of the pawn: but he can apply to the Court to be authorized to retain the pawn as payment to the extent of its value, according to an appraisal made by experts, or to have it sold at auction.

All covenants allowing a creditor to appropriate the

pawn, or to dispose of it without complying with the formalities above set forth, shall be void. Civ. C. 6, 1133, 1172, 2079, 2087 et seq.

Art. 2079. Until the debtor has been deprived of the ownership of the pawn, if this occurs, he remains the owner of the pawn, which is only a deposit in the hands of the creditor, to secure the latter's claim. Civ. C. 1915 et seq., 2088, 2102-2°.

Art. 2080. A creditor is liable for the loss of or injury to the pawn resulting from his negligence, according to the rules set forth in the title *Of Contracts or Obligations in General.*

On the other hand, the debtor is liable for the useful and necessary expenses which the creditor has incurred for the preservation of the pawn. Civ. C. 1137, 1245, 1302 et seq., 1375, 1381, 1383, 1728 et seq., 1880 et seq., 1890, 1927 et seq., 1947, 2086, 2102-3°.

Art. 2081. In case of a claim given as a pledge and bearing interest, the creditor shall deduct such interest from the interest which may be due to him.

If the debt which the claim has been pledged to secure does not itself bear interest, the interest shall be deducted from the capital of the claim. Civ. C. 1254, 1907, 1936, 2075, 2085.

Art. 2082. A debtor cannot demand that the person holding the pawn should return it, unless the latter makes an improper use of it, until the principal, interest and costs which the pawn has been given to secure have been entirely paid.

If the same debtor owed the same creditor another debt, which was contracted subsequently to the giving of the pledge, and which matures before the

payment of the first debt, the creditor is not obliged to dispossess himself of the pawn before he has been paid for both debts in full, even if no stipulation has been made to apply the pawn to the payment of the second debt. Civ. C. 618, 1948, 2074, 2087, 2102-2°.

Art. 2083. A pawn cannot be divided between the heirs of the debtor or those of the creditor, notwithstanding the divisibility of the debt.

The heir of the debtor who has paid his portion of the debt cannot ask for the return of his share of the pawn, so long as the debt has not been fully paid.

On the other hand, the heir of the creditor who has received his portion of the debt cannot return the pawn to the detriment of those of his co-heirs who have not been paid. Civ. C. 870, 883, 1217 et seq., 2090, 2114.

Art. 2084. The foregoing provisions do not apply to commercial matters, nor to pawnbroking establishments duly authorized and as to which the laws and regulations relating to them shall be followed.

Chapter II.

Of Antichresis.

Art. 2085. Antichresis can only be created by virtue of a writing.

By such an agreement a creditor only acquires the right to collect the revenue of the real estate, on condition of applying it annually to the payment of the interest, if any is due to him, and thereafter to the payment of the capital of his claim. Civ. C.

578 et seq., 1254, 1317 et seq., 1325, 1341, 1347 et seq., 1936, 2074 et seq., 2081, 2089.

Art. 2086. A creditor is bound, unless it has been otherwise agreed, to pay the taxes and annual charges upon the real estate which he holds owing to an antichresis.

He must also keep the property in order and undertake the useful and necessary repairs, for which he can deduct from the revenue all the expenses relating to these various things; otherwise he shall be liable to damages. Civ. C. 600 et seq., 1137 et seq., 1149, 1375, 1380 et seq., 2080 et seq., 2087.

Art. 2087. A debtor cannot claim the enjoyment of the real estate which he has turned over by antichresis, until the debt has been fully paid.

But a creditor who wishes to get rid of the obligations mentioned in the foregoing article, can always compel the debtor to resume the enjoyment of his property, unless he has renounced such right. Civ. C. 618, 2078, 2082, 2168 et seq.

Art. 2088. A creditor does not become the owner of the real estate by the mere failure to pay at the time agreed upon: any clause to the contrary is void: in such case, he can resort to legal measures to have his debtor deprived of the ownership. Civ. C. 2078, 2093, 2169 et seq., 2204 et seq.

Art. 2089. When the parties have stipulated that the revenue shall make up for the interest, either wholly or to a certain extent, this condition shall be carried out, in the same way as any other which is not prohibited by law. Civ. C. 1289 et seq., 1907, 2085.

Art. 2090. The provisions of articles 2077 and 2083 apply to antichresis as well as to pawns.

Art. 2091. Nothing enacted in the present chapter shall affect the rights which third parties may have to the real estate subjected to antichresis.

If a creditor, holding by virtue of such a title, enjoys preferences or mortgages upon the estate, lawfully existing and preserved, he can set them up as any other creditor, in their order. Civ. C. 1165, 2094 et seq., 2103 et seq., 2114 et seq.

TITLE EIGHTEENTH.

Of Preferences and Mortgages.

(Passed March 19, 1804; promulgated 29th of same month.)

Chapter I.

General Provisions.

Art. 2092. Whoever has personally made himself liable, is obliged to fulfil his engagements out of all his personal property or real estate, now owned or subsequently acquired. Civ. C. 2093, 2204, 2206 et seq., 2209, 2212.

Art. 2093. The property of the debtor is the common pledge of his creditors; and the proceeds thereof are distributed among them pro rata, unless legitimate causes of preference exist between the creditors. Civ. C. 1166 et seq., 2094, 2204 et seq., 2218.

Art. 2094. The legitimate causes of priority are preferences and mortgages. Civ. C. 555, 867, 1612 et seq., 1673, 1948, 2073, 2095 et seq., 2114 et seq., 2175.

Chapter II.

Of Preferences.

Art. 2095. A preference is a right which the nature of the claim gives to a creditor to be preferred to other creditors, even to mortgagees. Civ. C. 2073, 2096 et seq., 2106, 2166, 2180.

Art. 2096. Priorities are established between preferred creditors by various kinds of preferences. Civ. C. 2097, 2101 et seq., 2105.

Art. 2097. Preferred creditors of the same rank are paid pro rata. Civ. C. 2096.

Art. 2098. Preferences owing to the rights of the Royal (*Public*) Treasury, and the order in which they come are regulated by the laws applying thereto.

However the Royal (*Public*) Treasury cannot obtain preferences to the detriment of rights previously acquired by third parties. Civ. C. 2102-7°, 2121.

Art. 2099. Preferences can apply to personal property or to real estate. Civ. C. 2100 et seq., 2103 et seq.

Section I.

Of Preferences relating to Personal Property.

Art. 2100. Preferences are either general or special, as to certain articles of personal property. Civ. C. 2099, 2101 et seq.

§. I. *Of General Preferences relating to Personal Property.*

Art. 2101. Preferred claims over personal property generally are those hereinafter set forth, and can be enforced in the following order:

1° Court expenses;

2° Funeral expenses;

3° (Law of November 30, 1892). All expenses relating to the last illness, pro rata among those to whom they are due, whatever may have been its termination;

4° (Law of June 17, 1919). The wages of servants for the year elapsed and what is due for the current year; the sums for which a preference is established by article 549 of the Code of Commerce and the salaries of those who hire their services, for the last six months.

5° Supplies of provisions furnished to the debtor or his family, namely: during the last six months by retail dealers, such as bakers, butchers and others; and during the last year by boarding-house keepers and wholesale dealers.

6° (Law of April 9, 1898). The claim of a person who has met with an accident or of his legal representatives for medical care expenses, the chemist's bills, funeral expenses, and also the indemnities awarded in consequence of temporary incapacity to work, *is guaranteeed by the preference resulting from article* 2101 *of the Civil Code and shall be inserted therein under No.* 6. Civ. C. 516, 527-532, 2096 et seq., 2102-8°, 2104 et seq., 2107, 2271 et seq.

§. II. *Of Preferences relating to certain Personal Property.*

Art. 2102. The preferred claims over certain personal property are :

1° The rents and hire of real estate out of the revenue of the crop of the year, and the price of everything contained in the house or the farm let, and of everything which is used for the cultivation of the farm; namely: for everything that is due and for everything that shall become due, if the leases are made in the public form, or when made under private signature, if they have a positive date; and in both cases the other creditors have the right to sublet the house or farm during the remainder of the lease and to appropriate such rents, provided however, they pay to the landlord everything that may still be due to him;

And if there is no lease in public form or under private signature without a positive date, then for one year from the expiration of the current year;

The same preference exists for tenants' repairs and for everything relating to the execution of the lease;

Nevertheless, the sums due for seeds or for the expenses of the year's crop are paid out of the proceeds of the crop, and those due for implements out of the proceeds of such implements, in both cases in preference to the owner;

The owner can attach the furniture contained in his house or farm, when it has been removed without his consent, and he retains this privilege provided he has made his claim, namely: within forty days for furniture contained in the farm, and within fifteen days for furniture contained in a house;

2° Claims secured by the pledge in the possession of the creditor;

3° Expenses incurred to keep a thing in repair;

4° The price of articles of personal property not paid for, if they are still in the possession of the debtor, whether he has bought them on credit or not;

If the sale has been made for cash, the vendor can even claim the articles, so long as they are in the possession of the purchaser, and prevent a re-sale if the claim has been made within eight days from the delivery, and if the things are in the same condition as they were when delivered;

The vendor's preference, however, can only be enforced after the one belonging to the owner of the house or farm, unless it is proved that the owner knew that the furniture and other articles contained in the house or farm did not belong to the tenant;

No change is made in the laws and customs of trade relating to claims;

5° Board furnished by an innkeeper on the effects of the traveller which have been brought into his inn;

6° Expenses and incidental expenses for carriage on the thing carried;

7° Claims resulting from misappropriation or breach of trust committed by public officers in fulfilling their duties, on the amount given by them as security and on the interest which may be due thereon:

8° (Law of May 28, 1913). Claims originating from an accident for the benefit of third parties injured in the accident, or their legal representatives against the indemnities which the insurer of the civil responsibility admits that he is liable for, or for

which he is held liable by a decision of a Court by reason of an insurance policy.

No payment made to the insured shall be valid until the preferred creditors have been indemnified. Civ. C. 540, 1137, 1166, 1184, 1250, 1317 et seq., 1322, 1328, 1650, 1657, 1714 et seq.

Section II.

Of Preferences relating to Real Estate.

Art. 2103. Preferred creditors over real estate are :

1° A vendor, as to real estate sold by him, for the payment of the price thereof;

If there are several successive sales, of which the price is wholly or partly due, the first vendor is preferred to the second, the second to the third, and so on;

2° Those who have supplied the money for the purchase of real estate, provided it is expressly stated in the deed of loan that the sum was intended for that purpose, and in the vendor's receipt that the payment was made out of the money borrowed;

3° Co-heirs over the real estate of the succession, for the warranty of the divisions made between them, and for the balances and returns due on the shares;

4° Architects, contractors, masons and other workmen employed to put up, reconstruct or repair buildings, canals or other works whatsoever, provided, nevertheless, an official report has been previously drawn up by an expert appointed of its own accord by the Tribunal of First Instance of the district in which the buildings are situated, showing the condition of the premises with respect to the work which

the owner declares he has the intention of undertaking, and provided the work has been accepted, within six months at the most from its completion, by an expert also appointed by the Court, of its own accord;

But the amount of the preference cannot exceed the amount allowed by the second official report and it is limited to the increase in value at the time of the conveyance of the real estate and resulting from the work which has been done;

5° Those who have loaned the money to pay or reimburse the workmen have the same preference, provided the use made of the money is authentically shown by the deed of loan and by the receipt of the workmen, as is above specified for those who have loaned money for the purchase of real estate. Civ. C. 815, 833 et seq., 883 et seq., 1250, 1650, 1792 et seq., 2108 et seq., 2270.

Section III.

Of Preferences extending over Personal Property and Real Estate.

Art. 2104. The preferences which extend over personal property and real estate are those set forth in article 2101. Civ. C. 2101, 2105, 2107.

Art. 2105. When there is no personal property, and the preferences referred to in the foregoing article come up for payment out of the proceeds of the real estate concurrently with the preferred creditors of such real estate, the payments are made in the following order :

1° Court expenses and others mentioned in article 2101;

2° The claims set forth in article 2103.

Section IV.

How Preferences are maintained.

Art. 2106. Preferences relating to real estate do not produce any effect between creditors, unless they have been made public by being recorded in the registers of the registrar of mortgages in the manner provided by law, and only from the time they have been so recorded, with the following exceptions only. Civ. C. 2107 et seq., 2113, 2146 et seq., 2166 et seq., 2196 et seq.

Art. 2107. The claims mentioned in article 2101 are exempt from the necessity of being recorded.

Art. 2108. (Law of March 1, 1918). A vendor who has a preference retains it by the recording of the deed conveying the property to the purchaser and which shows that the whole or part of the price is due to him; for that purpose the recording of the deed made by the purchaser is equivalent to the recording by the vendor and the lender who has furnished the money for the purchase, and who shall be subrogated to the rights of the vendor in the same deed: nevertheless, the registrar of mortgages is bound, under penalty of damages towards third parties, to make a statement of his own accord in a schedule similar to those set forth in article 2148 hereinafter of the claims resulting from the deed transferring the property, as well in favor of the vendors as in favor of the lenders, who may also have

the deed of sale recorded, if this has not already been done, for the purpose of securing a record of what may be due to them on the purchase price. Civ. C. 939 et seq., 1069 et seq., 1184, 1654 et seq., 2103-1°-2°, 2155, 2181, 2196 et seq.

Art. 2109. A co-heir or co-parcener retains his preferences on each share of the property, or over the property sold at auction for the balances or returns due, or over the proceeds of the auction sale, by the inscription which he has caused to be made within sixty days from the date of the deed of partition, or of the public sale; during that time no mortgage can be granted on the property subject to a claim for a balance due, or sold at auction, to the detriment of the creditor of such balance or purchase price. Civ. C. 815, 833 et seq., 883 et seq., 1686, 2103-3°, 2163 et seq.

Art. 2110. Architects, contractors, masons and other workmen employed to construct, reconstruct or repair buildings, canals or other works, and those who, for the purpose of paying and reimbursing them, have loaned money proved to have been so used, retain their preference, from the date of the recording of the first official report, by the double record made :

1° Of the official report showing the condition of the premises;

2° Of the official report of acceptance. Civ. C. 1792 et seq., 2103-4°-5°.

Art. 2111. Creditors and legatees who ask for the separation of the estate of the decedent, in accordance with article 878 of the title *Of Successions,* retain against the creditors of the heirs or the representatives

of the decedent their preference over the real estate of the succession, by the inscriptions made respecting each separate property, within six months from the opening of the succession.

Before the expiration of that period, no valid mortgage can be granted on such property by the heirs or representatives, to the detriment of such creditors or legatees. Civ. C. 878, 1017.

Art. 2112. The assignees of these various preferred claims enjoy the same rights as the assignors, in their place and stead. Civ. C. 1249 et seq., 1295, 1689 et seq., 2152, 2214.

Art. 2113. All preferred claims which are subjected to the formality of being recorded and as to which the requirements above set forth to maintain the preference have not been complied with, do not cease, nevertheless, to operate as mortgages; but the mortgage with respect to third parties only dates from the time such records should have been made, as is hereinafter explained. Civ. C. 2106 et seq., 2114 et seq., 2134, 2146 et seq., 2154.

Chapter III.

Of Mortgages.

Art. 2114. A mortgage is an intrinsic right over the estate, subject thereto, for the satisfaction of an obligation.

By its nature it is indivisible, and subsist as a whole on all the real estate subject thereto, and on each piece of such property and every portion thereof.

It follows the property into whatever hands it

passes. Civ. C. 1217 et seq., 1222 et seq., 2093 et seq., 2143, 2144, 2161, 2163, 2166 et seq., 2180.

Art. 2115. A mortgage only exists in the cases and in the manner authorized by law.

Art. 2116. A mortgage is either legal, or judicial, or conventional. Civ. C. 2117, 2121 et seq., 2123 et seq., 2135 et seq.

Art. 2117. Legal mortgages are those resulting from the law.

Judicial mortgages are those resulting from judgments or judicial acts.

Conventional mortgages are those resulting from agreements and from the external form of deeds and contracts. Civ. C. 1017, 2121 et seq., 2123 et seq., 2135 et seq.

Art. 2118. The following property only can be mortgaged :

1° Real estate in trade (1) and its accessories considered as real estate ;

2° The usufruct of the same property and its accessories during the time of its duration. Civ. C. 517 et seq., 526, 551 et seq., 578 et seq., 1128, 2133 et seq., 2204.

Art. 2119. Personal property cannot be followed in other hands in consequence of a mortgage. Civ. C. 527 et seq., 2279.

Art. 2120. No changes are made by the present Code in the provisions of maritime laws relating to ships and sea going vessels.

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(1) This means all real estate of private individuals generally which is susceptible of being disposed of, in contradistinction to property of the State.

Section I.

Of Legal Mortgages.

Art. 2121. The rights and claims derived from a legal mortgage are :

Those of married women, on the property of their husband;

Those of minors and interdicted persons, on the property of their guardians ;

Those of the State, of districts, and of public establishments, on the property of collectors and administrators who are accountable. Civ. C. 389, 396, 417, 450, 469 et seq., 489, 509, 873, 1017, 1421 et seq., 1472, 1495, 1503, 1510, 1514 et seq., 1520 et seq., 1531, 1549 et seq., 1564 et seq., 1579, 2098, 2134 et seq., 2153 et seq., 2193 et seq.

Art. 2122. A creditor who has a legal mortgage can enforce his rights upon all the real estate belonging to his debtor, and upon the real estate which may come to him in the future, subject to the restrictions hereinafter contained. Civ. C. 2129, 2140, 2161.

Section II.

Of Judicial Mortgages.

Art. 2123. A judicial mortgage results from judgments either contested or by default, final or provisional, in favor of those who have obtained them. It also results from acknowledgments or verifications contained in the judgment, and from signatures affixed to an instrument under private signature creating an obligation.

It can be enforced upon the existing real estate of

the debtor and the real estate he may afterwards acquire, with the restrictions hereinafter mentioned.

Decisions of arbitrators only carry with them a mortgage when they are accompanied by an order of the Court for their execution.

Neither can a mortgage result from judgments granted in foreign countries, unless a French Court has declared that they shall be enforced; without prejudice to the provisions to the contrary which may exist in political laws or in treaties. Civ. C. 1322 et seq., 2117, 2122, 2128 et seq., 2134, 2148, 2161 et seq.

Section III.

Of Conventional Mortgages.

Art. 2124. Conventional mortgages can only be granted by those who have the capacity of conveying the real estate which they charge with the lien. Civ. C. 128, 217, 457, 484, 509, 513, 1108, 1123 et seq., 1305, 1421, 1428, 1449, 1507 et seq., 1535, 1538, 1554, 1594, 1598, 1988, 2117, 2125 et seq.

Art. 2125. Those who only have over real estate a right depending upon a condition or revocable in certain cases, or which may be rescinded, can merely grant a mortgage subject to the same conditions or to the same rescission.

(Law of December 31, 1910). However the mortgage granted by all the owners of an undivided piece of real estate shall exceptionally retain its effect, whatever may be subsequently the result of the sale at auction or of the partition. Civ. C. 865, 929, 952 et seq., 963, 1181, 1183, 1304, 1654, 1659, 1674, 2132, 2148-4°, 2163.

Art. 2126. The property of minors, of interdicted persons and of absentees so long as the possession thereof has only been temporarily granted, can only be mortgaged for the causes and in the manner established by law or by virtue of judgments. Civ. C. 128, 457, 484, 499, 509, 513, 2123.

Art. 2127. A conventional mortgage can only be granted by deed executed in public form in the presence of two notaries, or of one notary and two witnesses. Civ. C. 1317 et seq.

Art. 2128. Contracts entered into in a foreign country do not establish a mortgage on property in France, unless there are provisions contrary to this principle in the political laws or in treaties. Civ. C. 11, 2123.

Art. 2129. Conventional mortgages are only valid if the public instrument creating the claim, or a public instrument executed subsequently, states in specific terms the nature and the location of each piece of real estate actually belonging to the debtor and on which he grants the mortgage for the claim. All the property which he presently owns can be specifically covered by a mortgage.

Future property cannot be mortgaged. Civ. C. 1130, 2122 et seq., 2130, 2161.

Art. 2130. Nevertheless, if the present and unencumbered property of the debtor is insufficient to secure the claim, he may, by mentioning this insufficiency, agree that all the property which he may afterwards acquire shall become subject thereto, as the acquisitions take place. Civ. C. 1130, 2129, 2161.

Art. 2131. Likewise, if the present piece or pieces

of real estate subject to the mortgage has or have been destroyed or damaged so that it or they have become insufficient to secure the creditor, he may either proceed at once to obtain payment or ask for an additional mortgage. Civ. C. 1184, 1188, 2020.

Art. 2132. A conventional mortgage is only valid if the amount for which it is granted is fixed and determined by the deed : if the claim resulting from the obligation is conditional as to its existence or unsettled as to its amount, the creditor can only ask for the inscription which is hereafter referred to, to the extent of the estimated value expressly declared by him and which the debtor shall have the right to have reduced, if there is occasion therefor. Civ. C. 1168 et seq., 2125, 2148-4°, 2153-3°, 2163, 2165.

Art. 2133. A mortgage once granted extends to all the improvements made upon the property mortgaged. Civ. C. 546, 551 et seq., 1018 et seq., 2118-1°.

Section IV.

Of the Precedence of Mortgages with respect to each other.

Art. 2134. A mortgage, whether legal, judicial or conventional, only ranks between creditors from the day of the recording which the creditor has caused to be made in the registers of the registrar in the form and manner prescribed by law, with the exceptions mentioned in the following article. Civ. C. 2106, 2113, 2116, 2135, 2146.

Art. 2135. A mortgage exists independently of any record :

1° In favor of minors and interdicted persons, on

the real estate belonging to their guardian, with respect to his administration, from the day of the acceptance of the guardianship;

2° In favor of married women, for their dowries and marriage settlements, on the real estate of their husband, from the day of the marriage.

The wife only has a mortgage for the sums forming part of her dowry and coming from successions falling to her, or from donations made to her during the marriage, from the time of the opening of the successions or from the day when the donations have taken effect.

She only has a mortgage for the payment of debts which she has contracted with her husband or for the reinvestment of her individual property which has been conveyed, from the day of the obligation or of the sale.

In no case shall the provisions of the present article affect the rights of third parties acquired previously to the publication of the present title. Civ. C. 2, 450, 469, 509, 1392, 1421 et seq. 1470 et seq., 1542, 2121, 2134, 2136 et seq., 2153, 2193 et seq.

Art. 2136. Nevertheless, husbands and guardians are bound to make public the mortgages which encumber their property, and for that purpose to cause, of their own accord the recording to be made without delay at the offices established for that purpose, with respect to the real estate belonging to them or which may thereafter belong to them .

Husbands and guardians who, having failed to cause the recording ordered in the present article to be made, should consent or allow preferences or mortgages to take effect on their real estate without

expressly declaring that the said property was subject to the legal mortgage of a wife and of minors, shall be considered guilty of stellionate *and as such amenable to execution against the person.* (1) Civ. C. 1142, 2059, 2066, 2135, 2137, et seq., 2146 et seq., 2193 et seq.

Art. 2137. Assistant guardians are bound, under their personal responsibility and under penalty of all damages, to see that the recording with regard to the property of the guardian on account of his administration is made without delay, and even to cause the said recording to be made. Civ. C. 420 et seq., 1142, 2135 et seq., 2142, 2146 et seq., 2194 et seq.

Art. 2138. If the husbands, guardians and assistant-guardians have failed to cause the recording ordered by the foregoing articles to be made, the King's Attorney (*Republic's Attorney*) of the Tribunal of First Instance of the domicile of the husbands and guardians, or of the place where the property is located, shall have it made. Civ. C. 102 et seq., 2136 et seq.

Art. 2139. Relatives, either of the husband or of the wife, and those of minors, or in default of relatives, their friends, may cause the said recording to be made : the wife and the minors can also have it made. Civ. C. 2135 et seq., 2146 et seq., 2193 et seq.

Art. 2140. When parties of full age have agreed in the marriage contract that the recording shall only

(1) Execution against the person was abolished in commercial and civil matters and against foreigners by the law of 22nd July, 1867.

be made as to one or more pieces of real estate of the husband, the real estate which is not mentioned for the recording shall remain free and unencumbered of liens for the wife's dowry, her claims and her marriage settlement. It is not allowed to agree that no recording shall be made. Civ. C. 1387 et seq., 2121 et seq., 2141 et seq., 2161.

Art. 2141. The same rule shall apply to the real estate of the guardian, when the relatives have decided, in a family council, that the recording shall only be made as to certain pieces of real estate. Civ. C. 407 et seq., 2121 et seq., 2142 et seq., 2161.

Art. 2142. In the cases mentioned in the two foregoing articles, the husband, the guardian and the assistant-guardian are only bound to cause the recording to be made as to the real estate mentioned.

Art. 2143. When the mortgage has not been limited by the instrument appointing the guardian, he may, in case a general mortgage on his real estate manifestly exceeds what would be sufficient security for his administration, apply to have the mortgage limited to the real estate offering sufficient security to fully protect the minor.

The application shall be made against the assistant-guardian and the family must have previously expressed its opinion. Civ. C. 407 et seq., 420 et seq., 2121 et seq., 2140 et seq., 2144 et seq.

Art. 2144. The husband may, likewise, with the consent of his wife and after having taken the advice of her four nearest relatives assembled in a family meeting, apply to have the general mortgage covering all his real estate by reason of the dowry of the wife, her claims and her marriage settlements, limited

to the real estate sufficient to secure the rights of the wife in their entirety. Civ. C. 406 et seq., 2121 et seq., 2140 et seq., 2145.

Art. 2145. Judgments in suits brought by husbands and guardians shall only be given after hearing the King's Attorney (*Republic's Attorney*) and he having been made a party.

If the Court orders that the mortgage be limited to certain pieces of real estate, the recording which applies to all the others shall be cancelled. Civ. C. 2157 et seq.

Chapter IV.

Of the Mode of Recording Preferences and Mortgages.

Art. 2146. The recording shall be made at the office of the registrar of mortgages in whose district the property subject to the preferences or mortgages is situated. It does not produce any effect if it is made during the period when the acts performed previously to the opening of the bankruptcy are declared to be void.

The same rule applies between creditors of a succession, if the recording has only been made by one of them since the opening of the succession, and if the succession has only been accepted under benefit of inventory. Civ. C. 793 et seq., 2106 et seq., 2111, 2134 et seq., 2157 et seq., 2166 et seq., 2196 et seq., 2203.

Art. 2147. All creditors whose liens have been recorded on the same day take the same rank pro rata

as to a mortgage of the same date, without distinction whether the recording was made in the forenoon or in the afternoon, even when this difference has been noted by the registrar. Civ. C. 2134, 2200, 2260.

Art. 2148. (Law of March 1, 1918). To effect the recording, a creditor presents either in person or through a third party, to the registrar of mortgages, the original deed or an official certified copy of the judgment or of the deed conferring the preference or mortgage. The recording of the separation of estates specified in article 2111 and of legal mortgages may however be demanded without the production of the deeds.

(Law of February 21, 1926). He annexes thereto two schedules absolutely identical, of which an ordinance shall specify the external appearance, the type and the cost of the paper furnished by the Administration at the expense of the applicants, on which the schedules shall be either printed or written by hand or typewritten, with indelible ink, under penalty of the fine hereinafter specified. The two schedules shall be signed by the applicant or his representative and certified as having been faithfully compared. If the applicant has not made use of the official form, the registrar is nevertheless bound to make the recording which shall be valid. However, he shall notify the applicant by a simple registered notice that he must file new schedules according to the correct form, to take the place of the irregular ones, within fifteen days of the date of the notice, under penalty of a fine of one hundred francs in favor of the Treasury.

Nevertheless exceptionally only the one of the two

schedules which must be kept at the office of the registrar must necessarily be drawn up on paper furnished by the Administrtaion : the second schedule may be written on paper of which the selection is left to the applicant.

(Law of March 1, 1918). Each schedule shall contain exclusively :

1° The name, first names, domicile of the creditor, his occupation if he has one; for a corporation, its corporate name, its principal place of business, and an election of domicile in a given place, in the district of the Tribunal of First Instance where the property is situated.

2° All the names and first names of the debtor in the order of his civil status, his domicile, the date and place of birth, his occupation, if he is known to have one, and for a corporation the corporate name and principal place of business. The indication of the first names of the debtor in the order of his civil status and of the date and place of birth, does not apply to the recording of judicial mortgages.

3° The date and nature of the deed which has created the preference or the mortgage; and when the applicant is not legally called upon to produce a deed, the schedules mentioning the cause and the nature of the claim.

4. The capital of the claim, its accessories and the date when it becomes due. The applicant must give an estimate of the annuities, charges and unliquidated claims; and if the rights are contingent or conditional indicate briefly the event or the condition from which the existence of the claim results, unless he is entitled to a legal exemption.

5° The indication of the nature and location of

the property over which he desires to retain his preference or mortgage and also the indication of the number or sections of the cadastre. When the real estate comprised in the same number of the cadastre is to be divided in lots or is included in a partition or a voluntary or judicial sale at auction, a plan of the division into lots on the same scale as the plan of the cadastre certified by the parties shall be annexed to the deed or the list of conditions, and also, if need be, a report fixing the boundaries, which documents shall, in all cases, be exempt from stamp duty and registration. The recording made by virtue of the deed shall mention the new numbers corresponding to the plan of division into lots.

(Law of May 31, 1918). The provisions contained in the last paragraph do not apply in case of legal or judicial mortgages : if there has been no agreement, the simple recording of these mortgages embraces all the real estate situated in the district of the office.

(Law of March 1, 1918). The omission in the schedules of one or several of the declarations prescribed as well by the present article as by the following article 2153, shall only annul the effect of the recording when third parties have thereby suffered a loss. An application to set it aside can only be made by those to whom the omission or irregularity would be detrimental, and the Court may annul the recording or limit its effect, according to the nature and extent of the loss. Civ. C. 111, 1168 et seq., 2108, 2121 et seq., 2125, 2129, 2132, 2149 et seq., 2163 et seq., 2196 et seq., 2200.

Art. 2149. The recording to be made in connection with the property of a deceased person can be

made with a simple designation of the decedent, as is stated in no. 2 of the foregoing article. Civ. C. 877, 2148.

Art. 2150. (Law of March 1, 1918). The registrar mentions, in the register prescribed by article 2200 hereinafter, a declaration that the schedules have been deposited and hands to the applicant the deed or a certified copy of the same, and also one of the schedules at the foot of which he mentions the date of the deposit, the volume and the number under which the schedule intended for the archives has been filed.

The date of the recording is fixed by the entry made in the register of deposits.

The schedules intended for the archives shall be bound, without being removed, by order of the registrars and at their expense. Civ. C. 2197, 2202 et seq.

Art. 2151. (Law of June 17, 1893). A preferred creditor whose deed has been recorded, or a mortgagee whose claim has been recorded for a capital bearing interest or arrears, has the right to be placed, for three years only, on the same rank as for his capital, without prejudice to the special recording of mortgages to be made, for the interest and arrears not covered by the original record from their date. Civ. C. 584, 2168.

Art. 2152. (Law of March 1, 1918). A person who has caused the recording to be made, and his representatives or assigns, may, by a public deed, change at the office of the registrar of mortgages the domicile elected by them in the record, provided they select and designate a new one in the district of the Civil Tribunal of First Instance where the property is situated. Civ. C. 111, 1692, 2148-1°, 2156.

Art. 2153. (Law of March 1, 1918). The rights of the State, of districts and of public establishments to purely legal mortgages on the property of persons accountable to them; those of minors or interdicted persons, against the guardians; those of married women against their husbands, shall be recorded upon the deposit of two schedules drawn up in accordance with the provisions of the second paragraph of article 2148, under penalty of forced refusal.

Each schedule shall contain exclusively :

1°. The name, first names, domicile of the creditor, his occupation if he has one and the domicile elected for him in a given place, within the district of the Tribunal of First Instance, where the property is situated.

2° The designation of the debtor, as prescribed by article 2148 no. 2.

3° The nature of the rights to be protected and the amount of their value as to specific things, without being bound to fix the amount of those which are conditional, contingent or uncertain. Civ. C. 102, 111. 1168 et seq., 2121, 2125, 2132, 2148, 2152, 2163.

Art. 2154. The recording keeps the mortgage and the preference alive for ten years from the day of its date; its effect ceases, if the recording has not been renewed before the expiration of this period. Civ. C. 2146 et seq.

Art. 2155. The expenses for recording shall be paid by the debtor, unless there is an agreement to the contrary; they shall be advanced by the person who has the record made, except in case of a legal mortgage, for the recording of which the registrar

has his remedy against the debtor. The expense of the recording which the vendor may ask for shall be paid by the purchaser. Civ. C. 1248, 1593, 2108, 2121.

Art. 2156. Actions to which the recording may give rise against creditors shall be brought before the Court having jurisdiction, by a summons served upon the person, or at the last domicile elected in the register, even in case of death, either of the creditors or of those at whose residence an election of domicile has been made. Civ. C. 111, 2148 et seq., 2152, 2159.

Chapter V.

Of Cancellation and Limitation of Inscriptions.

Art. 2157. Inscriptions shall be cancelled by the consent of the parties interested and who have the capacity, or by virtue of a judgment of the highest Court, or which has become final. Civ. C. 1109 et seq., 1123 et seq., 1351, 2158 et seq., 2180.

Art. 2158. In both cases, those who wish to have them cancelled shall deposit at the office of the registrar a certified copy of the public deed containing the consent, or of the judgment. Civ. C. 2157.

Art. 2159. A cancellation which is not consented to can be applied for before the Court of the district in which the inscription has been made, unless it has been made to secure a contingent or uncertain judgment, as to the execution and satisfaction of which the debtor and the alleged creditor are engaged in liti-

gation or are awaiting the judgment of another Court; in which case the action for cancellation shall be brought there or be remitted thither.

Nevertheless, the agreement made by the creditor and the debtor, to bring the action before a Court which they have selected in case of litigation, shall be enforced between them. Civ. C. 2132, 2156.

Art. 2160. Cancellation must be ordered by the Court, when the inscription has been made without being based on the law or upon an agreement, or when it has been made by virtue of a deed which was either irregular, or has expired, or has been satisfied, or when the liens entitling to a preference or mortgage have been wiped out by operation of the law. Civ. C. 1234, 2154, 2157, 2180 et seq.

Art. 2161. Whenever the inscription effected by a creditor who, according to law, has the right to make it on the present or future property of the debtor, without any limit having been agreed to, extends over more different pieces of property than is necessary to secure the claims, an action to have the inscription limited, or partly cancelled as to what exceeds the proper portion, can be maintained by the debtor.

The rules established in article 2159 as to jurisdiction shall be followed.

The provisions of the present article do not apply to conventional mortgages. Civ. C. 2121 et seq., 2131, 2143 et seq., 2162 et seq.

Art. 2162. The inscriptions which cover several pieces of property are considered excessive, when the value of a single one or several of them, exceeds by more than one-third of the property unencumbered

the amount of the capital and legal accessories of the claims. Civ. C. 2143 et seq., 2164.

Art. 2163. In like manner the inscriptions effected according to an appraisal of claims made by the creditor which have not been fixed by agreement, as to the mortgage to be granted for their protection and which by their nature are conditional, contingent or uncertain, can be limited as excessive. Civ. C. 1168, 2125, 2132, 2148-4°, 2153, 2164.

Art. 2164. In such case, the excess shall be appraised by the Court according to circumstances, the probabilities of events and the presumptions of fact, in such a manner as to conciliate the probable rights of the creditor and the advantage of preserving a reasonable credit to the debtor; without prejudice to the new inscriptions of mortgages which may be made, from the day of their date, if events have caused the undetermined claims to reach a larger amount. Civ. C. 1353, 2146 et seq.

Art. 2165. The value of real estate which is to be taken into account with regard to the value of claims with a third added thereto, is reached by calculating fifteen times the amount of the revenue declared in the original register of real estate taxes, or shown by the rate of taxation in the books, according to the proportion existing in the districts where the property is situated between such register or such rate and the revenue, for real estate not liable to deteriorate, and ten times this amount for real estate subject to deterioration. Nevertheless, the Court may also be guided by the information derived from unsuspected leases, from official reports of appraisals which may have been made previously at times not far off,

and from all other similar deeds, and it may appraise the revenue at the average rate resulting from these various sources of information. Civ. C. 2162 et seq.

Chapter VI.

Of the Effect of Preferences and Mortgages against Third Parties in Possession.

Art. 2166. Creditors who have a preference or mortgage over real estate which has been recorded, retain it in whatever hands the real estate may pass, and they rank and are paid according to the order of their claims, or of the recording. Civ. C. 2094 et seq., 2106 et seq., 2114, 2134 et seq., 2146 et seq., 2167 et seq., 2218.

Art. 2167. If a third party in possession does not comply with the formalities hereinafter mentioned to clear his property, he remains liable as possessor for all the mortgages, by the sole effect of the recording, and has the benefit of the time and delay granted to the original debtor. Civ. C. 1251, 2168 et seq., 2181 et seq., 2193 et seq.

Art. 2168. A third party in possession is bound in the same case, either to pay all the interest and the capital due, to whatever sum they may amount, or to abandon the real estate mortgaged, without any restriction. Civ. C. 2151, 2169 et seq., 2178.

Art. 2169. If a third party in possession fails to comply fully with one of these obligations, each mortgagee has the right to cause the real estate to be sold, thirty days after the service upon the original debtor of a writ of demand, and after service upon

the third party in possession of a summons to pay the debt which has become due, or to abandon the estate. Civ. C. 2166, 2170, 2172 et seq., 2183, 2204 et seq.

Art. 2170. Nevertheless, a third party in possession who is not personally liable for the debt, may object to the sale of the estate mortgaged which has been transferred to him, if there is other real estate mortgaged for the same debt in the possession of the principal debtor or debtors liable, and he may require the previous seizure and realization thereof, in the manner set forth in the title *Of Security:* during the seizure and realization, the sale of the mortgaged estate is postponed. Civ. C. 1370 et seq., 2021 et seq., 2171.

Art. 2171. The plea of seizure and realization cannot be set up against a preferred creditor, or a creditor who has a special mortgage on the real estate. Civ. C. 2103 et seq., 2129, 2170, 2206 et seq.

Art. 2172. As to abandonment of the property on account of a mortgage, it can be made by all third parties in possession who are not personally liable for the debt, and who are capable of making a conveyance. Civ. C. 1123 et seq., 2092, 2173 et seq.

Art. 2173. It can even take place after the third party in possession has acknowledged the debt, or when a judgment has been granted against him in such capacity only: the abandonment does not prevent the third party in possession from taking back the property up to the time of the judicial sale, by paying the whole debt and the costs. Civ. C. 2168 et seq., 2174.

Art. 2174. An abandonment on account of a mortgage is made at the clerk's office of the Court where

the property is situated; and the Court judicially records the same.

Upon the petition of the most diligent interested party, a curator of the real estate abandoned is appointed, against whom the proceedings shall be taken for the sale thereof, in the manner provided for ejectments. Civ. C. 812, 2204 et seq., 2218.

Art. 2175. The damages occasioned by the acts or negligence of the third party in possession, to the detriment of mortgagees or preferred creditors, give rise to a cause of action for indemnity against him; but he can only recover his expenses and improvements to the extent of the additional value resulting from the improvements. Civ. C. 861 et seq., 1245, 1382 et seq., 1631 et seq., 2103 et seq., 2114.

Art. 2176. The revenue of the real estate mortgaged is only due by the third party in possession from the day of the writ of demand for payment or abandonment, and if the proceedings instituted have been stopped for three years, from the time of service of a new writ of demand. Civ. C. 549 et seq., 2169, 2217.

Art. 2177. Servitudes and specific rights which a third party in possession had upon the real estate before entering into possession, are revived after the abandonment, or the judicial sale made against him.

His personal creditors can enforce their mortgages, according to their rank against the property abondoned, or sold at auction, after all the creditors who had liens against the previous owners. Civ. C. 637 et seq., 703 et seq., 1166 et seq., 1300, 1626, 2134, 2172 et seq.

Art. 2178. A third party in possession who has paid

the mortgage, or has abandoned the real estate mortgaged, or has been ejected from such real estate, has a remedy for warranty against the principal debtor, as allowed by law. Civ. C. 611, 874, 1020, 1024, 1251, 1625 et seq., 2033.

Art. 2179. A third party in possession who wishes to clear his property by paying the price thereof, must comply with the regulations set forth in chapter VIII of the present title. Civ. C. 2167, 2180-3°, 2181 et seq., 2193 et seq.

Chapter VII.

Of the Satisfaction of Preferences and Mortgages.

Art. 2180. Preferences and mortgages are satisfied :

1° By the extinction of the principal obligation,

2° By the renunciation of the mortgage by the creditor,

3° By the fulfilment of the formalities and conditions prescribed to third parties in possession, to clear the property which they have acquired.

4° By prescription,

Prescription is acquired by the debtor as to the property in his possession, by the time specified for prescription of the causes of action which confer the mortgage or preference.

As to the property which is in the possession of a third party, prescription is acquired by him at the end of the time specified for prescription of the pro-

perty in his favor : if prescription depends upon a deed, it only commences to run from the time such deed has been recorded in the books of the registrar.

The recording made by the creditor does not prevent the prescription established by law, in favor of a debtor or a third party in possession, from running. Civ. C. 119, 1166, 1234, 1249 et seq., 1278 et seq., 1299, 2106, 2146, 2154, 2157 et seq., 2167, 2181 et seq., 2193 et seq., 2262, 2265 et seq.

Chapter VIII.

Of the Mode of freeing Property from Preferences and Mortgages.

Art. 2181. Contracts conveying real estate or specific rights relating to real estate, which third parties wish to free from preferences and mortgages, shall be recorded in full by the registrar of mortgages in the district where the property is situated.

The recording shall be made in a register kept for that purpose, and the Registrar shall be bound to give a certificate thereof to the applicant. Civ. C. 939 et seq., 1069 et seq., 2108, 2118, 2180-3°, 2182 et seq., 2193 et seq., 2196 et seq.

Art. 2182. A simple recording of deeds conveying property in the books of the registrar, does not free the real estate from the existing mortgages and preferences.

A vendor only transmits to the purchaser the ownership of and the rights to the property sold which he had himself : he transmits them subject to the same preferences and mortgages for which he

was responsible. Civ. C. 1122, 1138, 1140, 1583, 2114, 2166, 2181.

Art. 2183. If the new owner wishes to protect himself against the effects of the proceedings authorized by chapter VI of the present title, he is obliged to serve upon the creditors at the domicile elected by them in their inscriptions, either before the proceedings, or within one month at the latest from the date of the first writ of demand made upon him;

1° An extract of his deed, containing only the date and the nature of the deed, the name and an exact designation of the vendor or of the donor, the nature and the location of the estate sold or given, and in case of an entire property a general description only of the estate and of the districts in which it is situated, the price and the expenses forming part of the price of sale, or an appraisal of the property, if it has been given;

2° An extract of the recording of the deed of sale;

3° A schedule in three columns, of which the first shall contain the dates of the mortgages and those of the recording; the second the names of the creditors; the third the amount of the claims recorded. Civ. C. 2148-1°, 2166 et seq., 2169, 2181, 2184 et seq. 2192 et seq., 2196.

Art. 2184. The purchaser or the donee shall declare in the same deed that he is ready to pay forthwith the debts and mortgages up to the amount of the price only, whether the debts have become due or not. Civ. C. 2167 et seq., 2183, 2185.

Art. 2185. When the new owner has given this notice within the time specified, every creditor whose deed has been recorded can apply to have the real

estate sold at auction and by way of public sale, provided :

1° This application is served upon the new owner within forty days at the latest from the notice served on behalf of the latter, adding two days for each distance of five myriametres between the domicile elected and the real domicile of each creditor who is an applicant.

2° The application contains the engagement of the applicant to make a bid or cause a bid to be made of one-tenth above the price stipulated in the contract, or declared by the new owner;

3° The same notice is served within the same time upon the previous owner and principal debtor;

4° The original and the copies of these notices are signed by the creditor making the application, or by his attorney-in-fact expressly appointed, who in such case is obliged to furnish a copy of his power of attorney ;

5° Such creditor offers to give security to the extent of the price and charges.

All of which is required under penalty of avoidance. Civ. C. 1984 et seq., 2011 et seq., 2040 et seq., 2148-1°, 2183 et seq., 2186 et seq.

Art. 2186. If the creditors have failed to apply for a sale at auction within the time and in the manner specified, the value of the real estate remains finally fixed at the price laid down in the deed, or declared by the new owner, who, in consequence, shall be exonerated from all preferences and mortgages by paying said price to the creditors entitled to receive it, according to their rank, or by depositing it. Civ. C. 1257 et seq., 2180-3°, 2184 et seq.

Art. 2187. In case of resale at auction, it shall take place according to the rules established for compulsory ejectments, upon the application either of the creditor who has applied for it, or of the new owner. The applicant shall indicate in the notices the price stipulated in the deed, or declared, and the additional amount for which the creditor has obliged himself to make a bid, or to have it made. Civ. C. 2184, 2185-2°, 2204 et seq.

Art. 2188. The highest bidder is obliged, in addition to the price of his bid, to return to the owner or donee who has been dispossessed, the expenses and just costs of the deed, those of the recording in the books of the registrar, those of the notices and those incurred by him to obtain the resale. Civ. C. 1630, 1699.

Art. 2189. A purchaser or donee who retains the real estate put up at auction, by becoming the highest bidder, is not obliged to have the judgment ordering the public sale recorded. Civ. 2181, 2183 et seq.

Art. 2190. The withdrawal of the creditor who has applied for a sale at auction, does not stop the public sale, even if the creditor pays the amount of his bid, unless all the other mortgagees expressly consent thereto.

Art. 2191. A purchaser who has become the final bidder shall have his remedy, such as the law allows, against the vendor for the repayment of the amount exceeding the price stipulated in his deed, and for the interest thereon from the day of each payment. Civ. C. 1625 et seq., 2178, 2192.

Art. 2192. In case the deed of the new owner includes real estate and personal property, or several

pieces of real estate, of which some are mortgaged and others not, situated in districts of the same or different offices of registrars, conveyed for a single or same price, or for distinct and separate prices, and which are or are not worked together, the price of each piece of real estate subject to a special and distinct recording shall be declared in the notice of the new owner, if necessary, upon an estimate based upon the total price mentioned in the deed.

The creditor who outbids, can in no case be compelled to make his bid include, either other personal property, or any other pieces of real estate than those mortgaged for his claim and situated in the same district; but the new owner may proceed against the former owners to obtain compensation for any damage which he may have suffered, either on account of the division of the property, or of the works which he has purchased. Civ. C. 2183 et seq., 2211.

Chapter IX.

Of the Manner of Satisfying Unrecorded Mortgages over the Property of Husbands and Guardians.

Art. 2193. Purchasers of real estate belonging to husbands or guardians, when no inscription has been made on such real estate by reason of the management of a guardian, or of dowry, or of a wife's right to take back, or of any of her marriage settlements, may clear off the mortgages existing on the property acquired by them. Civ. C. 2121 et seq., 2135 et seq., 2153, 2181, 2194 et seq.

Art. 2194. For that purpose they shall deposit in the clerk's office of the Civil Tribunal of the place where the property is situated, a copy duly compared, of the deed transferring the property, and they shall certify that the deposit has been effected by serving a notice both upon the wife or the assistant guardian and the King's Attorney (*Republic's Attorney*) of the Court. An extract of this deed containing its date, the names, first names, occupation and domicile of the contracting parties, a description of the nature and location of the property, the price and other expenses of the sale, shall be and shall remain posted for two months in the hall of the Court; during such time the wives, husbands, guardians, assistant-guardians, minors, interdicted persons, relatives or friends, and the King's Attorney (*Republic's Attorney*) are allowed to require and cause the inscription to be made of the property conveyed at the office of the registrar of mortgages, if necessary, which shall have the same effect as if it had been made upon the day of the marriage contract, or the day the guardian assumed his duties; without prejudice to the proceedings which may be brought against the husbands and guardians, as is above stated, on account of the mortgages granted by them in favor of third parties without having declared to the latter that the real estate was already mortgaged, by reason of a marriage or guardianship. Civ. C. 2059, 2135 et seq., 2145 et seq., 2183 et seq., 2195.

Art. 2195. If, during the period of the two months of the publication of the contract, no inscription has been made on behalf of a wife, a minor, or an interdicted person, against the real estate sold, it passes to the purchaser without any lien by reason of

a dowry, or of the wife's right to a return, or of her marriage settlements, or of the management of a guardian; but subject to the remedy against the husband or the guardian, if there is occasion therefor.

If an inscription has been made on behalf of such wife, minor, or interdicted person, and if there are prior creditors who absorb the whole price or a part of it, the purchaser shall be released as to the price or the part of the price paid by him to creditors holding an effectual rank, and the inscriptions made on behalf of wives, minors or interdicted persons shall be cancelled of record, either wholly or to the extent of the amount paid.

If the inscriptions on behalf of wives, minors or interdicted persons had been made previously, the purchaser cannot pay any part of the price to the detriment of such inscriptions, which shall always bear the date of the marriage contract or of the beginning of the guardian's management, as has been hereabove stated: and in such case the inscriptions of other creditors, who do not rank effectually, shall be cancelled. Civ. C. 2134 et seq., 2146 et seq., 2157, 2194.

Chapter X.

Of the Publicity of Registers and of the Responsibility of Registrars.

Art. 2196. Registrars of mortgages are obliged to deliver copies of the deeds recorded in their registers and of the inscriptions existing, or a certificate to the effect that none exist, to all those who ask for them. Civ. C. 2150, 2183, 2197 et seq., 2202.

Art. 2197. They are responsible for the damage resulting from :

1° Omissions on their part to record in their registers the transcriptions of deeds of conveyance, and the inscriptions applied for in their offices;

2° Omissions to mention in their certificates one or several existing inscriptions, unless, in the latter case, the error should come from insufficient designations which cannot be charged to them. Civ. C. 1382 et seq., 2102-7°, 2108, 2146 et seq., 2181, 2194, 2198 et seq., 2202 et seq.

Art. 2198. The real estate as to which the registrar has omitted in his certificate to designate one or more of the liens recorded, remains free therefrom in the hands of the new purchaser, subject to the liability of the registrar, provided such purchaser has asked for the certificate since the recording of his deed; without prejudice, nevertheless, to the right of the creditors to be given the rank belonging to them, so long as the price has not been paid by the purchaser, or so long as the rank which the creditors are entitled to between each other has not been established. Civ. C. 1382 et seq., 2114, 2134 et seq., 2166, 2218.

Art. 2199. Registrars can never refuse or delay the transcription of deeds of conveyance, the inscription of mortgages, or the delivery of certificates asked for, under penalty of damages to the parties; for such purpose an official report of the refusal or delay shall forthwith be drawn up at the instance of the applicants, either by a Justice of the Peace, or by a bailiff who is a crier of the Court, or by any other bailiff, or by a notary with the assistance of two witnesses. Civ. C. 1149, 1382 et seq., 2196 et seq. 2202 et seq.

Art. 2200. (Law of January 5, 1875). Nevertheless, registrars are obliged to keep a register in which they shall enter, day by day and in numerical order, the deliveries made to them of deeds of conveyance or attachments against real estate to be transcribed, of abstracts to be inscribed and of deeds, certified copies or extracts of deeds granting a subrogation or preference, and of judgments ordering the annulment, cancellation or rescission of deeds to be recorded.

They shall give the applicant a receipt on stamped paper bearing the number of the register on which the delivery has been recorded, for each deed or each abstract to be transcribed, inscribed or entered, and they shall not transcribe deeds of conveyance or attachments of real estate, nor inscribe abstracts nor enter deeds granting a subrogation or a preference, nor judgments ordering the annulment, cancellation or rescission of deeds recorded on the registers kept for that purpose, except upon the date and in the order of the deliveries made to them.

The register provided for by this article shall be kept in duplicate and one of the duplicates shall be deposited without expense and within thirty days from the time it is closed, at the clerk's office of the Civil Tribunal of a different district from the one in which the registrar resides.

(Law of March, 10, 1922). The Tribunal in the clerk's office of which the duplicate of the register of deposit is deposited, shall be designated by an ordinance of the Minister of Justice.

Art. 2201. All the books of registrars shall be on stamped paper, numbered and initialed upon each page, from the first to the last, by one of the Judges

of the Tribunal in the district of which the office is situated. The books shall be closed every day in the same manner as those kept for recording deeds. Civ. C. 41.

Art 2202. In performing their duties, registrars are obliged to comply with all the provisions of the present chapter, under penalty of a fine of from two hundred to one thousand francs for the first violation, and of dismissal in case of a second violation, without prejudice to damages to the parties, which shall be paid before the fine. Civ. C. 1149, 1382 et seq., 2102-7°, 2196 et seq., 2203.

Art. 2203. Entries relating to deposits, inscriptions and transcriptions shall be made in the registers following each other without blanks or interlineations, under penalty for the registrar of a fine of from one thousand to two thousand francs, besides damages to the parties, also payable by preference to the fine. Civ. C. 2201 et seq.

TITLE NINETEENTH.

Of Compulsory Ejectment and of Rank among Creditors.

(Passed March 19, 1804; promulgated 29th of same month.)

Chapter I.

Of Compulsory Ejectments.

Art. 2204. A creditor may sue for ejectment :

1° From real estate or its accessories deemed to be real property owned in fee by his debtor;

2° From the usufruct belonging to the debtor upon property of the same nature. Civ. C. 517, 522, 552, 578, 2092, 2118.

Art. 2205. Nevertheless, the undivided share of a co-heir in the real estate of a succession cannot be put up for sale by his personal creditors, before the division or judicial sale which they may demand, if they deem proper, or in which they may take part, in accordance with article 882 of the title *Of Successions.* Civ. C. 820, 882 et seq. 1166, 2103, 2109.

Art. 2206. Real estate of a minor, even emancipated, or of an interdicted person, cannot be put up for sale before seizure of the personal property. Civ. C. 457, 476, 482 et seq., 1596, 1666, 2021, 2170 et seq.

Art. 2207. Seizure of personal property is not necessary before ejectment from real estate owned jointly by a person of full age and a minor or an interdicted person, if the debt is common to them, or if proceedings have been started against a person of full age, or before interdiction. Civ. C. 815, 1666.

Art. 2208. Proceedings to forcibly dispossess of real estate forming part of a community must be brought only against the husband who is the debtor, even if the wife is liable for the debt.

Proceedings to forcibly dispossess of real estate of the wife which has not become part of the community must be brought against the husband and wife, and the latter may be authorized by the Court to proceed, if the husband refuses to carry on the suit with her, or, if he is a minor.

In case of minority of the husband and wife or of minority of the wife alone, if her husband, being of

full age, refuses to carry on the proceedings with her, a guardian is appointed to the wife by the Court, and the proceedings are carried on against him. Civ. C. 217 et seq., 450, 476, 480, 482, 1421 et seq.

Art. 2209. A creditor cannot sue to obtain the sale of real estate which has not been mortgaged to him, unless the property mortgaged to him is of insufficient value. Civ. C. 2114, 2204, 2211.

Art. 2210. A forced sale of property which is situated in several different districts can only be applied for successively, unless it forms part of one and the same undertaking.

It is sued for before the Court in the district of the principal undertaking, or if there is no such principal undertaking, where the portion of property lies which brings in the greatest revenue, according to the tax-roll. Civ. C. 2192, 2211.

Art. 2211. If the property mortgaged to the creditor, and the property not mortgaged, or the property situated in different districts forms part of a single and same undertaking, the sale of the whole shall be applied for together, if the debtor wishes it; and the apportionment of the price is made according to what the public sale has produced, if necessary. Civ. C. 1601, n° 2, 2192, 2210.

Art. 2212. If a debtor proves by leases in public form that the net and available revenue of his real estate during one year is sufficient for the payment of the principal, interest and costs of the debt, and if he offers the assignment thereof to the creditor, the proceedings may be stayed by the Court, but can be resumed in case of an attachment or if some other

obstacle to the payment arises. Civ. C. 1244, 1275, 1317, 1711, 1714 et seq.

Art. 2213. A forced sale of real estate can only be applied for by virtue of an instrument in public form and upon which execution can be issued, and for a duly established and liquidated debt. If the debt is for a ready money, but is not liquidated, the proceedings are regular, but a public sale can only take place after the amount of the same has been liquidated. Civ. C. 820, 1291, 1317, 2127.

Art. 2214. An assignee of an instrument upon which execution can be issued, can only sue to dispossess after a notice of the assignment has been served upon the debtor. Civ. C. 877, 1249, 1295, 1689, 2112, 2204.

Art. 2215. Proceedings can be instituted in consequence of an interlocutory or final judgment giving the right to immediate execution, notwithstanding an appeal; but a public sale can only take place after a judgment of the highest Court, or when a judgment has become final.

Proceedings cannot be instituted in consequence of a judgment by default during the time the default can be opened. Civ. C. 1350 et seq.

Art. 2216. Proceedings cannot be dismissed on the ground that the creditor has brought them for a larger amount than what is due to him.

Art. 2217. Previously to all proceedings to dispossess of real estate, a writ of demand to pay shall be served by a bailiff, at the instance and solicitation of the creditor, upon the person of the debtor or at his domicile.

The form of the writ of demand and the manner of proceeding to dispossess are regulated by the laws relating to procedure.

Chapter II.

Of the Rank of Creditors and Distribution of the Price between them.

Art. 2218. The order in which the price of real estate shall be distributed and the manner of proceeding are regulated by the laws of procedure.

TITLE TWENTIETH.

Of Prescription.

(Passed March 15, 1804; promulgated 25th of same month.)

Chapter I.

General Provisions.

Art. 2219. Prescription is a way of acquiring property or of releasing one self at the end of a certain time, and under conditions specified by law. Civ. C. 712, 1234, 1350-2°, 2180, 2228 et seq., 2260 et seq.

Art. 2220. A person cannot renounce prescription beforehand: he can renounce prescription which has taken effect. Civ. C. 1130, 2222, 2224 et seq.

Art. 2221. A renunciation of prescription is either express or tacit: tacit renunciation results from a fact which supposes the abandonment of an acquired right. Civ. C. 778, 1353, 2222.

Art. 2222. A person who cannot make a conveyance cannot renounce prescription which has taken effect. Civ. C. 128, 217, 457, 484, 513, 1124 et seq., 1421 et seq., 1428, 1449, 1554 et seq., 1988.

Art. 2223. A Court cannot, of its own accord, set up a plea of prescription.

Art. 2224. Prescription can be set up at all stages of a case, even before a Royal Court (*Court of Appeals*), unless the circumstances indicate that the party who has not set up the plea of prescription should be considered as having renounced it. Civ. C. 1353, 2221.

Art. 2225. Creditors or any other persons whose interest it is that prescription should take place can set it up, even if the debtor or owner renounces it. Civ. C. 622, 788, 789, 1166 et seq., 1464, 2221.

Art. 2226. There is no prescription against things which are not in trade. (1) Civ. C. 328, 537 et seq., 1128, 1598.

Art. 2227. The State, public institutions and districts are subject to the same prescriptions as private individuals, and can set them up in the same manner. Civ. C. 537 et seq., 560, 573, 2264.

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(1) This expression must be taken in its broad sense and means that property which cannot belong to private individuals is not subject to prescription.

Chapter II.

Of Possession.

Art. 2228. Possession is the retention or enjoyment of a thing or of a right which we have or which we make use of, either ourselves or through another person who holds it or makes use of it in our name. Civ. C. 549 et seq. 1127, 2229 et seq., 2236, 2279.

Art. 2229. In order that prescription should take place, it is necessary to have had a continuous, uninterrupted, peaceful, public and unequivocal possession, and in the capacity of owner. Civ. C. 688, 690 et seq., 1350, 1352, 2230 et seq., 2236 et seq., 2242 et seq.

Art. 2230. A person is always presumed to possess for himself and as owner, if it is not proved that he commenced by possessing for another. Civ. C. 1350, 1352, 2229, 2234, 2236, 2242 et seq.

Art. 2231. When a person has commenced to possess for another he is always presumed to have possession by virtue of the same right, unless there is proof to the contrary. Civ. C. 1350, 1352, 2229, 2234, 2236 et seq., 2240 et seq.

Art. 2232. Acts which are purely permissible or which are simply tolerated cannot give rise to possession or prescription. Civ. C. 2229.

Art. 2233. Neither can acts of duress establish possession capable of giving rise to prescription.

Effectual possession only begins from the time the duress has ceased. Civ. C. 1109, 1111 et seq., 1304, 2229.

Art. 2234. A person actually in possession who establishes that he formerly possessed, is presumed to have continued to possess during the intervening time, unless there is proof to the contrary. Civ. C. 1350, 1352, 2229 et seq.

Art. 2235. To make prescription complete, a person may add to the possession he holds the possession of his predecessor, in whatever manner the former has acquired it, whether by virtue of a general or special title, or with or without consideration. Civ. C. 724, 1122, 2237 et seq.

Chapter III.

Of the Causes which prevent Prescription.

Art. 2236. Those who hold possession for third parties never acquire ownership by prescription, whatever time may have elapsed.

Thus, a lessee, a depositary, a usufructuary, and all others who hold the property of an owner, not as their own, cannot acquire ownership by prescription. Civ. C. 578, 1665, 1709, 1915, 2071 et seq., 2229 et seq.

Art. 2237. Neither can the heirs of those who held property in any manner set forth in the foregoing article acquire ownership by prescription. Civ. C. 724, 1122, 2235.

Art. 2238. Nevertheless, the persons mentioned in articles 2236 and 2237 can acquire ownership by prescription, if the title giving them possession is modified, either owing to the act of a third party, or

by an adverse claim set up by them against the rights of the owner. Civ. C. 2240 et seq.

Art. 2239. Those to whom tenants, depositaries or other persons holding property not as their own, have transferred such property by deed of conveyance, can acquire ownership by prescription. Civ. C. 2236, 2262, 2265 et seq.

Art. 2240. A person cannot acquire ownership by prescription against his own title, in this sense, that a person cannot modify as to himself the cause and nature of his possession. Civ. C. 2231, 2241.

Art. 2241. A person can acquire ownership by prescription against his own title, in this sense that the cancellation of the obligation which he has contracted can be obtained by prescription. Civ. C. 1234, 2240.

Chapter IV.

Of the Causes interrupting or suspending Prescription.

Section I.

Of the Causes interrupting Prescription.

Art. 2242. Prescription can be interrupted either naturally or civilly. Civ. C. 2229, 2243 et seq.

Art. 2243. Natural interruption takes place when the person in possession is deprived for upwards of one year of the enjoyment of the property, either by the former owner or even by a third party.

Art. 2244. A citation to appear in Court, a writ of demand, or an attachment served upon the person

whom one wishes to prevent from acquiring prescription, constitute a civil interruption. Civ. C. 2245 et seq., 2274-2°.

Art. 2245. A citation to appear for conciliation in the office of a Justice of the Peace interrupts prescription from the day of its date, when it is followed by a summons to appear in Court issued within the time allowed by law. Civ. C. 2246 et seq.

Art. 2246. A citation to appear in Court, even before a Court which has no jurisdiction, interrupts prescription.

Art. 2247. If a summons is void owing to some informality,

If the plaintiff withdraws his action,

If he allows the action to lapse,

Or if his action is dismissed,

The interruption is considered as not having taken place. Civ. C. 1350-3°, 1351, 2244.

Art. 2248. Prescription is interrupted by the debtor or of the person in possession admitting the right of the person against whom prescription was running. Civ. C. 1337 et seq., 1354 et seq., 2274.

Art. 2249. The service of a summons made in accordance with the foregoing articles upon one of the debtors jointly and severally liable, or his admission interrupts prescription against all the others and even against their heirs.

Such service made upon one of the heirs of a debtor jointly and severally liable or an admission on the part of that heir, does not interrupt prescription against the other heirs, even if the claim is based upon a mortgage, unless the obligation is indivisible.

Such service or admission only interrupts prescrip-

tion against the other co-debtors, for the share for which the heir is liable.

For the purpose of interrupting prescription entirely against all the other co-debtors, it is necessary to make such service upon all the heirs of the deceased debtor, or to obtain an admission from all such heirs. Civ. C. 709, 1199 et seq., 1206, 1212 et seq., 1217 et seq., 1222 et seq., 2250.

Art. 2250. Such service made upon the principal debtor, or an admission on his part, interrupts prescription against the surety. Civ. C. 2011 et seq., 2034 et seq.

Section II.

Of the Causes which suspend the Course of Prescription.

Art. 2251. Prescription runs against all persons, unless they come within an exception established by law. Civ. C. 709 et seq., 2233, 2252 et seq.

Art. 2252. Prescription does not run against minors and interdicted persons, with the exception of what is stated in article 2278, and except in the other cases specified by law. Civ. C. 388 et seq., 509 et seq., 709 et seq., 942, 1125, 1304-2°, 1663, 1676, 2271 et seq., 2278.

Art. 2253. It never runs between husband and wife. Civ. C. 1096, 1099, 1595, 2254 et seq.

Art. 2254. Prescription runs against a married woman as to the property of which the husband has the management, subject to her remedy against her husband, even if there is no separation of property resulting from a marriage contract or from a judg-

ment. Civ. C. 1421, 1428, 1443 et seq., 1531, 1536, 1549, 1562, 2253, 2255 et seq.

Art. 2255. Nevertheless, it does not run during the marriage as regards the conveyance of property subject to the dotal system, in accordance with article 1561 of the title *Of Marriage Contracts and of the respective Rights of Husband and Wife.* Civ. C. 1560 et seq., 2254, 2256.

Art. 2256. Prescription is likewise suspended during marriage :

1° In case an action on the part of the wife can only be brought after she had made use of the option to accept or renounce the community;

2° In case the husband, having sold property belonging to the wife individually, without her consent, is responsible for the sale, and in all other cases in which the action of the wife might make the husband responsible. Civ. C. 1428, 1453 et seq., 1531, 1535, 1538, 1554 et seq., 1561 et seq., 1576, 1599, 1626 et seq., 2257.

Art. 2257. Prescription does not run :

Against a claim depending upon a condition, until the condition has happened;

Against an action upon a warranty, until the ejectment has taken place;

Against a claim maturing upon a given day, until the day arrives. Civ. C. 1181 et seq., 1185 et seq., 1626 et seq.

Art. 2258. Prescription does not run against the heir under benefit of inventory, as regards claims which he has against the succession.

It runs against a vacant succession, although no

curator has been appointed. Civ. C. 462, 724, 790, 802-2°, 811 et seq.

Art. 2259. It runs also during the three months allowed to make the inventory, and the forty days for deliberation. Civ. C. 779, 795 et seq., 1457 et seq.

Chapter V.

Of the Time required for Prescription.

Section I.

General Provisions.

Art. 2260. Prescription is counted by days and not by hours. Civ. C. 2219, 2261.

Art. 2261. It takes effect when the last day of the period is over.

Section II.

Of Prescription of Thirty Years.

Art. 2262. All causes of action, either relating to real estate or to personal property, are outlawed at the end of thirty years, and the person alleging prescription is not obliged to produce any proof, and no exception resulting from bad faith can be set up against him. Civ. C. 617, 625, 706, 712, 789, 966, 1234, 2228, 2268, 2281.

Art. 2263. After twenty-eight years from the date of the last deed, the person who owes an annuity may be compelled to furnish at his expense a new instrument to his creditor or to the latter's legal representa-

tives. Civ. C. 877, 1122, 1337 et seq., 1909 et seq., 2248 et seq.

Art. 2264. The rules of prescription applying to other things than those mentioned in the present title, are explained under the titles which apply to them. Civ. C. 32, 181, 183, 185, 316 et seq., 328, 330, 475, 559 et seq., 617, 619, 641 et seq., 685, 690 et seq., 695, 706 et seq., 789 et seq., 809, 815, 877 et seq., 886, 957, 966, 1047, 1304, 1456, 1461 et seq., 1560 et seq., 1622, 1648, 1660 et seq., 1676 et seq., 1854, 2111 et seq., 2180-4°.

Section III.

Of Prescription of Ten or Twenty Years.

Art. 2265. A person who acquires a piece of real estate in good faith and by virtue of a good title, is covered by prescription as to its ownership at the end of ten years, if the real owner lives within the limits of the district of the Royal Court (*Court of Appeals*) where the real estate is situated; and at the end of twenty years, if such owner is domiciled outside of said district. Civ. C. 550, 2266 et seq.

Art. 2266. If the real owner has had a domicile within and without the district at different times, it is necessary in order to make the prescription complete, to add to what is missing to the ten years of presence twice the number of years of deficiency, to complete the ten years of presence. Civ. C. 2265.

Art. 2267. A title which is void owing to an irregularity as to its form, cannot serve as the basis of the prescription of ten and twenty years. Civ. C. 550, 2265.

Art. 2268. Good faith is always presumed, and the person who alleges bad faith is obliged to prove it. Civ. C. 550, 1116, 2269.

Art. 2269. It is sufficient that good faith should have existed at the time of the acquisition. Civ. C. 550, 2231, 2268.

Art. 2270. After ten years, architects and contractors are released from their guarantee, in connection with the structural work which they have put up or directed. Civ. C. 1304, 1792 et seq. 1798.

Section IV.

Of Certain special Prescriptions.

Art. 2271. The right of action belonging to masters and teachers of sciences and arts, for lessons given by them by the month.

The right of action belonging to keepers of hotels and taverns, for lodging and board furnished by them.

The right of action belonging to workmen and laborers, for the payment of their days of work, their supplies and wages.

Are outlawed at the end of six months. Civ. C. 1710, 1779 et seq. 1799, 2101-4°-5°, 2102-5°, 2260 et seq., 2274 et seq., 2278.

Art. 2272. (Law of November 30, 1892). The right of action belonging to bailiffs for the fees of the writs which they serve and the matters they attend to;

The right of action belonging to schoolmasters, for the amount of their pupils' schooling; and to other masters for the charges of apprenticeship;

The right of action belonging to servants who are

engaged by the year, for the payment of their wages.

Are outlawed at the end of one year;

The right of action belonging to physicians, surgeons, surgeon-dentists, midwives and druggists, for their visits, operations and medicines, is outlawed at the end of two years.

(Law of February 26, 1911). The right of action belonging to tradespeople for the goods which they sell to private individuals, not in business, is outlawed at the end of two years. Civ. C. 2274 et seq., 2276, 2278.

Art. 2273. The right of action belonging to solicitors, for the payment of their costs and fees, is outlawed at the end of two years from the time of the judgment given in the suits, or of the settlement made by the parties or since the revocation of said solicitors. As regards matters not ended, they cannot bring suit for their costs and fees dating back more than five years. Civ. C. 2274 et seq., 2278.

Art. 2274. Prescription takes place in the above cases, even if the supplies, deliveries, services and work have been continued.

It only ceases to run in case of an account stated, a schedule or an obligation given, or a summons before a Court which has not lapsed. Civ. C. 2244, 2248, 2271 et seq., 2275, 2278.

Art. 2275. Nevertheless, the persons against whom these prescriptions are set up, can have an oath deferred to those who set them up, for the purpose of ascertaining whether the thing has really been paid for.

The oath can be deferred to widows and heirs, or to the guardians of the latter, if they are minors, in

order to make them declare if they do not know whether the thing is due. Civ. C. 724, 1358 et seq., 2271 et seq., 2278.

Art. 2276. Judges and solicitors are released from claims for recovery of documents at the end of five years after judgment in the suits.

Bailiffs are likewise released two years after they have attended to a matter, or after the service of writs of which they have had charge. Civ. C. 2272 et seq., 2278.

Art. 2277. Arrears of perpetual annuities or annuities for life;

Those of allowances for support;

Rents of houses and those of country property;

Interest on sums loaned, and generally everything which is payable annually or periodically at shorter times;

Are outlawed at the end of five years. Civ. C. 529 et seq., 584, 1015-2°, 1728, 1905 et seq., 1909, 1968 et seq. 2278.

Art. 2278. The prescriptions referred to in the articles of the present section, run against minors and interdicted persons, subject to their remedy against their guardians. Civ. C. 1382, 1663, 1676, 2252.

Art. 2279. Possesssion is equivalent to a title with respect to personal property.

Nevertheless, a person who has lost a thing, or from whom it has been stolen, can claim it from the person in whose hands he finds it, during three years from the day of the loss or of the theft; but the latter has his remedy against the individual from whom he has received it. Civ. C. 527 et seq., 549,

et seq., 717, 1141, 1293-1°, 1302, 1382, 1926, 1935, 2102-4°, 2119, 2228, 2280.

Art. 2280. If the present possessor of the thing stolen or lost has bought it at a fair or at a market, or at a public sale, or from a tradesman selling similar goods, the original owner can only have it returned by reimbursing to the possessor the price which it has cost him.

(Law of July 11, 1892). The lessor who claims, by virtue of article 2102, the furniture removed without his consent and which has been purchased under the same conditions, must likewise repay to the purchaser the price which it has cost him. Civ. C. 2279.

Art. 2281. Prescriptions which have commenced to run at the time of the publication of the present title shall be regulated in accordance with the former laws.

Nevertheless, the prescriptions then commenced, and for which, under the former laws, more than thirty years are still necessary from the same time, shall become complete at the end of such period of thirty years. Civ. C. 2, 691, 227, 2262 et seq.

End of the Civil Code.

INDEX.

[*The References apply to the Articles.*]

A

ART.

ABANDONMENT. (See MORTGAGES).
Of rights to party wall 656
Of tenement subject to servitude 699
In case of successions under benefit of inventory 802
Of enjoyment of beneficiaries 1053

ABBREVIATIONS.
Not allowed in records of civil status 42

ABDUCTION.
Paternity in case of 340

ABSENCE. (See INVENTORY and TEMPORARY GUARDIAN).
Presumption of 112
Notary to represent absentees 113
Duties of Public Prosecutor 114
Establishment of 115
Proceedings upon application to establish 116
Motives to be considered by Court 117
When judgment may be given 119
Effects if absentee has left no power of attorney 120
Effects if he has left a power of attorney 121
Effects upon expiration of power of attorney 122
When heirs have provisional possession 123
Continuation or dissolution of community 124
Effects of provisional possession 125
When inventory to be made and sale to be ordered 126
Consequences of enjoyment 127
Real estate cannot be conveyed or encumbered 128
When effects become final and sureties discharged 129
When death established, succession becomes open 130
Return of revenue spent 130
Effects of reappearance of absentee 131
Consequence of reappearance after final possession 132
Rights of children 133
Rights of third parties 134
Eventual rights of absentee 135
Succession accruing to absentee 136
Action to claim inheritance 137
As to income collected 138
Effects in connection with marriage 139
When husband or wife entitled to temporary possession 140
Care of minor children 141
When family council to confer care 142
Court may authorize wife, when husband is absent 222
Action for division 817
How division made when co-heirs absent 838
When division final 840
Establishment of children 1427

ABSENTEES. (See ABSENCE).

	Art.
ACCEPTANCE. (See COMMUNITY, DONATIONS and SUCCESSIONS).	
Of successions	774
Not compulsory	775
By married women, minors or interdicted persons	776
Effect of	777
Can be express or tacit	778
When not implied	779
Results from donation, sale or assignment	780
As to heirs of an heir	781
When such heirs disagree as to	782
When due to fraud	783
When prescription takes effect	789
Within what time can be made	790
By wife of community	1453
Wife must decide within three months from divorce	1463
Effects of acceptance of community by wife	1467
By wife's heirs	1475
Of assignment by debtor	1690
Of power of attorney	1985
ACCESSION.	
Defined	546
As to fruits	547
As to what adds itself to a thing	551
As to what is above and below the surface	552
As to buildings and constructions	553
When constructions made with materials of another	554
When constructions and plantations made by another	555
As to alluvion	556
As to derelictions	557
When alluvion does not take place	558
When field carried away	559
As to islands and accretions	560 et seq.
As to bed of river	563
As to pigeons, rabbits and fish	564
When things belong to different owners	565
When things joined belong to different owners	566 et seq.
When material used does not belong to mechanic	570
When workmanship exceeds value of material	571
When materials cannot be separated	572
When there is a mixture of several materials	573
When material is superior	574
When the thing must be sold	575
Rights of owner of material used without his knowledge	576
Damages when material used without owner's knowledge	577
Ownership acquired by	712
ACCESSORIES.	
Of a thing bequeathed	1018
Of a thing sold	1615
Included in sale or assignment of a claim	1692
When security extends to	2016
In case of ejectment	2204
ACCIDENT.	
When oral evidence sufficient	1348
Repairs in case of	1754
Depositary not answerable for	1929
ACCIDENT. (By).	
Owner or usufructuary not obliged to rebuild	607
Building destroyed	855
When damages not due by debtor	1148
Destruction of specific thing	1302
Loss of a thing unduly received	1379
Loss in case of sale	1647
Destruction of property leased	1722

ART.

Destruction of crop 1769
Responsibility of lessee 1772
Carriers not responsible for loss 1784
When lessee responsible in cattle leases 1807
When loss falls upon farmer 1825
Responsibility of borrower for loss 1881

ACCIDENTALLY. (See by Accident).

ACCOUNTS.
In case of absence 113
Guardian to furnish 470
Final accounts of guardian 471
When agreement between guardian and minor void 472
Controversies as to 473
Interest not due by minor until accounting closed 474

ACCOUNT STATED.
When certain special prescriptions cease to run 2274

ACCRETION.
Of land bordering river 556
When belongs to State 560
In case of a joint legacy 1044

ACKNOWLEDGMENT.
Of natural child, how recorded 62
Of natural child, how made 334
Which children cannot be acknowledged 335
By father does not affect mother 336
Its effect when made during marriage 337
Rights of natural child 338
Interested parties may contest 339
When child cannot prove paternal or maternal descent 342
When judicial mortgages result from 2123

ACQUESTS.
As to real estate 1402
When real estate is not an acquest 1408
What is included in community of 1498
Partnership of acquests in dotal system 1581

ACTS OF VIOLENCE. (See Violence).
Lessor not responsible for 1725
When lessee must have lessor joined 1727

ADMINISTRATION. (See Acceptance).
Acts of administration as to acceptance of inheritance 779

ADMISSION.
Weight given to 1350
Kinds of 1354
Force of an extra-judicial 1355
What is a judicial 1356

ADMISSION OF CLAIM.
In case of joint liability 1211

ADOPTION.
When it can take place 343
To whom permitted 344
As to nationality 345
Not allowed by several persons unless married 346
Of husband or wife 347
When person under age 348
How consent given 349
When consent of family council required 350

ART.

Consequences in case of adoption 351
Further consequences 352
What relationship it establishes 353
When marriage prohibited 354
Prohibitions can be removed 355
Duties of adopted 356
Rights of adopted or his issue to succession of adopter 357
When adopted dies without issue 358
When adopter entitled to recover things given 359
How deed of adoption executed 360
By whom deed drawn up 361
Deed must be confirmed by Court 362
How Court must proceed 363
How Court decides 364
Right to appeal 365
Decision to be posted and published 366
Must be transcribed 367
When adoption takes effect 368
Death of adopter during suit 369
Revocation of adoption 370

ADULTEROUS CHILDREN.
Legitimation of 331
Cannot be acknowledged 335
Are entitled to nourishment 762

ADULTERY. (See Repudiation).
A ground for divorce 229, 230
Husband may disown child 312

ADVANCEMENT.
To child of interdicted person 511

ADVANTAGES. (See Collations and Division of Successions).

ADVISER OR SPECIAL ADVISER.
When father may appoint 391
How appointment can be made 392

AGE.
For marriage 144
Dispensations can be granted for marriage 145
When exempts from acting as guardian 433
When majority takes place 488

AGREEMENTS WITHOUT CONTRACT. (See Quasi Contracts).
What they are and what they result from 1370

ALIENS. (See Nationality).
Real estate of 3
Their rights 11
When suit can be brought against 14
Can sue a French citizen 15
Must give security 16
Faith to be given to records of civil status of. 47
Marriage with French citizen, when valid 170

ALIMONY. (See Divorce).
Pending decision in suit for divorce 238
After divorce. 301

ALLUVION.
What it is 556
To whom it belongs 556, 557
When it does not take place 558
Enjoyment of usufructuary 596

ALTERATIONS.
In records of civil status 52

ART.

ANIMALS. (See Cattle).
Young of animals belong to owner 547
Responsibility of usufructuary in case of death of 615
Owner responsible for injuries caused by 1385

ANNUITIES.
Are personal property 529
Are redeemable, if perpetual 530
Interest can be stipulated upon capital 1909
Different kinds of 1910
Redemption of perpetual annuity 1911
Debtor of perpetual annuity may be compelled to redeem .. 1912
Capital due in case of bankruptcy or insolvency 1913
Rules relating to life annuities 1914
How created 1968
Can be created without consideration 1969
Reduction or avoidance of 1970
In whose favor they can be made 1971
Can be made in favor of one or several persons 1972
Can be made in favor of third party 1973
Ineffectual if made in favor of dead person .. .. .. 1974 et seq.
When void in case of early death 1975
Rate to be fixed by parties 1976
When cancellation can be applied for 1977
Effect of non-payment of interest 1978
Obligations of grantor 1979
Proportion due 1980
When cannot be attached 1981
Annuitant must prove his existence 1983

ANNULMENT. (See Cancellation and Nullity).

ANNULMENT OF MARRIAGE. (See Marriage).
Of marriage contracted without consent of parties 180
When action for annulment can be brought 181
How marriage can be attacked for want of consent 182
When action no longer maintainable 183
Special cases in which marriage can be attacked 184
When marriage cannot be attacked if parties under age .. 185
Those who have consented cannot ask for 186
Special restrictions to action for 187
Who can apply for annulment of second marriage 188
Validity of first marriage to be decided 189
When Republic's Attorney can ask for 190
Marriage not publicly contracted can be attacked 191
Cannot be asked for in case of common repute 196
Effects of marriage which is annulled 201
Effects as to party in good faith and children 202

ANTICHRESIS.
Definition 2072
How created 2085
Obligations of creditor 2086
Enjoyment by debtor 2087
Creditor does not become owner 2088
Agreement as to revenue 2089
Provisions relating to pawns which apply to 2090
Rights of third parties not affected by 2091

APPRENTICESHIP.
Expenses of, not subject to collation 852
Charges for, when outlawed 2272

APPROVAL. (See Family Council and Instrument of Notoriety).
Instrument of notoriety subject to 72
When decisions of family council subject to 458
Guardian cannot compromise without 467

ART.

APPROVED.
When must be written on notes, etc 1326

ARCHITECTS. (See Jobs).
Responsibility in case of destruction 1792
When cannot ask for increase in price 1793
Contract expires by death 1795
When released from guarantee 2270

ARREARS. (See Interest).
Rights of creditor jointly liable 1212
Form part of community 1401
When outlawed 2277

ASCENDANTS. (See Division of Successions).
Marriage prohibited between descendants and 161
Ascendants pay no damages, if opposition vacated 179
Children owe support to 205
Ascendants of unworthy heir not bound to denounce him .. 728
How succession divided when there are ascendants 733
No representation in favor of 741
Their rights to certain successions 746
When they inherit articles given by them 747
When can take from minors 907
Portion of succession which they can take 915, 916
Can accept donation for minor 935
May divide their property among descendants 1075

ASSETS. (See Community).

ASSIGNMENT. (See Assignment of claims and Novation).
How co-heir may exclude assignee from division 841
What is assignment of property 1265
Kinds of 1266
Definition of voluntary 1267
Definition of judicial 1268
Effect of judicial 1269
Further effects of judicial 1270
Depositary in bad faith loses right to make 1945

ASSIGNMENT OF CLAIMS AND INCORPOREAL RIGHTS.
How delivery takes place 1689
How assignee seized 1690
Effects of payment by debtor before notice of 1691
What it includes 1692
Warranty is due 1693
Liability as to solvency of debtor 1694
When solvency of debtor guaranteed 1695
Of hereditary rights 1696
When income or property received to be returned 1697
Purchaser must reimburse payments made 1698
How debtor can be released 1699
When claim is contested 1700
Special provision 1701

ASSISTANT GUARDIAN. (See Guardians).
Required in every guardianship 420
Appointed by family council 421
When appointed immediately after guardian 422
Guardian cannot vote for 423
Duties in case of vacancy in guardianship 424
When his duties cease 425
Special provisions applying to 426
Appointment to interdicted persons 505
Provisions applying to interdicted persons 509
When compelled to have inventory made 1442
Is bound to see that inscriptions are made 2137

ART.

ASYLUMS.
Placing interdicted persons in 510

ATTACHMENT.
How beneficiary heir must pay in case of 808
When personal property to be sold in case of 826
Interrupts prescription 2244

ATTORNEY. (See Republic's Attorney).

B

BAD FAITH.
Causes heirs to forfeit benefit of inventory 801
Obliges person receiving payment to return amount 1378
Person to whom thing is returned must pay expenses 1381
Cannot be set up after prescription of thirty years 2262

BAKERS.
Preferred claim of 2101

BALCONIES.
What distance to be left 678
How distance counted 680

BANKER.
Validity of engagement of a minor 1308
Notice to be given in case of separation of property 1445

BANKRUPTCY.
How obligation depending upon time affected by 1188
Capital of perpetual annuity becomes due 1913
Surety can proceed against debtor 2032

BANNS. (See Marriage).

BARRELS.
When real estate by destination 524

BASTARDS. (See Natural Children).

BATHS. (See Floating Baths).

BEAMS.
Nature of repairs for replacing of beams 606
Placing beam on party wall 657

BEDS.
Are furnishing movables 534

BEEHIVES.
When real estate by destination 524

BENEFIT OF INVENTORY.
How obtained 793
An inventory must be made 794
Time for inventory and acceptance 795
Court may order sale of certain articles 796

	Art.
Heir cannot be compelled to assume capacity as such	797
Heir can ask for more time	798
How costs paid	799
How long heir retains right to obtain	800
When heir forfeits benefit of inventory	801
Effects of	802
Beneficiary heir has administration of property	803
His responsibility for administration	804
How personal property sold	805
How real estate sold	806
Heir may be compelled to give security	807
How heir must pay in case of attachment	808
Rights of creditors	809
Expenses for seals, how paid	810
BETTING.	
Is a contingent contract	1964
No action lies for payment	1965
No claim exists in case of voluntary payment	1967
BIRTHS. (See Records of Civil Status).	
Declaration of, how made	55
By whom made	56
What the record shall contain, who entitled to full copy	57
What to be done if new born child found	58
How record drawn at sea, or during voyage	59
Deposit of record drawn at sea	60
Final deposit of such records	61
Guardian cannot resign on account of birth of child	437
How donation affected by birth of child	953
Revocation of donation in case of birth of child	960
BOARDING-HOUSE KEEPERS.	
Rights of preference	2102
BOATS.	
Are personal property	531
BOILERS.	
When real estate by destination	524
BOLTS.	
Repairs to, incumbent upon tenant	1754
BOOKS. (See Movables).	
When word "movable" does not include	533
Entries in books of merchants, what proof	1329
Merchants' books are proof against them	1330
How binding as proofs	1331
BOUNDARIES. (See Servitudes).	
Marking and expense of same	646
BRANCHES.	
When reaching over must be cut	673
BREACH OF TRUST.	
Person guilty of, excluded from guardianship	444
BROTHERS AND SISTERS.	
Marriage prohibited between	162
When they can oppose marriage	174
Form part of family council	408
Of unworthy heir not obliged to denounce him	728
How degrees of relationship counted	738
When submitted to obligation to return	1049

ART.

BUILDINGS.
Are real estate 518
Rights of usufructuary in case of destruction 624
When owner responsible in case of destruction 1386

BULLION.
Rules as to loans in bullion 1896
How such loans returned 1897

BULWARKS.
Form part of Public Domain 540
When they belong to the State 541

BURIAL.
Cannot take place without permit 77

BUTCHERS.
Have preferred claim 2101

BUYER. (See Purchaser and Sale).

C

CALCULATION.
Errors in compromises to be corrected 2058

CALVES.
When they belong to lessor 1831

CANCELLATION. (See Mortgage, Nullity and Sale).
Effect of fulfilment of resolutive condition 1183
Of sale for failure to deliver 1610
When action for, to be brought by purchaser 1622
When obtained, if purchaser partly ejected 1636
On account of unapparent servitudes 1638
When purchase price unpaid 1654
Lease is cancelled by total destruction 1722
Lease may be cancelled for wrongful use 1729
Obligation of lessee in case of 1760
When lessor can cancel lease of country property 1766
When life annuity can be cancelled 1977
How inscriptions of mortgage cancelled 2157
Papers to be deposited for their cancellation 2158
How applied for 2159
Must be ordered by the Court 2160
Action for cancellation of inscriptions in excess 2161

CAPACITY. (See Donations, Minors, Married Women, Natural Children and Wills).
For making donations or wills 901
Which persons capable 902
Who is capable of receiving by donation or will 906
Disguised liberalities are void 911
Is necessary to make contract valid 1108
Which persons capable of making contract 1123
Persons incapable of contracting 1124
When contract can be attacked for want of 1125
Required to make valid payment 1238
Necessary requirements to make a tender 1258
For novation 1272
For general partnerships 1840

CAPITA. (Per).
Division in case of representation 743
How descendants inherit 745
How ascendants inherit 74
When relatives inherit. 753

ART.

CAPITAL.
Emancipated minor cannot receive 482
When person restricted from receiving 499
Spendthrift prohibited from receiving 513
Payment cannot be imputed to, if interest due 1254
To be returned if received in bad faith 1378
Powers of husband over dotal property 1549
When perpetual annuity becomes due 1913
Effect of failure to pay annuity 1978

CARPENTERS. (See Jobs, Workmen).
Remedies at law 1798
Subject to certain rules 1799

CARRIERS BY LAND OR WATER.
Obligations of .. .. 1782 et seq.
Responsibility in case of loss or injuries 1783, 1784
Must keep books 1785
Subject to special regulations 1786
Have preferred claim 2102

CASH.
Not included in word movable 533
Not included in sale or donation of house 536
Rights of usufructuary 587
How collation made 869

CATTLE. (See Leases).
Liability of usufructuary in case of loss of 616
Included in donations or devise of land 1064
Lessee must place sufficient number on property 1766
Leases of .. .. 1800 et seq.
Lessee cannot dispose, without owner's consent 1812

CAUSE.
In obligations 1131
Need not be expressed 1132
When illicit 1133

CAVEAT.
When creditor can issue 821
When public sale necessary after 826
Effect when made to stop division 882

CESSPOOLS.
Distance to be left 674
Cleaning of, by whom paid for 1756

CHILDREN. (See Acknowledgment, Adoption, Apprenticeship Guardians, Marriage, Paternal Authority, Portion of Property which can be disposed of, and Support).
When newly born child found 58

CHIMNEYS.
Building chimney against party wall 657
Distance to be left in building 674

CHINA.
When included in words "furnishing movables" 534

CITIZENS. (See Nationality and Naturalization).

CIVIC RIGHTS.
Governed by constitutional and electoral laws 7

CIVIL DEATH. (Abolished by Law of May 31st, 1854, see page 26).

ART.

CIVIL RIGHTS. (See NATIONALITY).
Are independent of political rights 7

CIVIL STATUS. (See RECORDS OF CIVIL STATUS AND COMMON REPUTE).

CLAIMS. (See RECOVERY).
Preferred claims to personal property generally 2101
Preferred claims to certain articles 2102

CLAUSE.
How construed when susceptible of two interpretations. 1157, 1158
Customary clauses to be supplied in contracts 1160
Must be interpreted in connection with each other 1161
Penal clause 1226

CLEANING. (See CESSPOOLS AND WELLS).

CLERKS.
Of notaries cannct be witnesses to wills 975

CLOTHES.
Not included in word movable 533
Usufruct of clothes 589
Right of wife to take back 1492
This right does not belong to heirs.. 1495
Right of wife to take back in dotal system 1566

CO-GUARDIAN.
When required 417

COHABITION.
Effect in action for annulment of marriage 181
When husband may disown child 312, 313

CO-HEIRS. (See HEIRS).

COLLATERAL. (See SUCCESSIONS).

COLLATIONS. (See COMMUNITY, DIVISION AND SUCCESSIONS).
What the heirs must return 829
Heirs must collate 843
To what extent due 844
Heir who renounces succession not obliged to collate 845
When donee not a presumptive heir 846
When exemption presumed 847
Son not bound to collate 848
Exemption in favor of husband or wife 849
Is due to succession of donor 850
Is due for establishment of co-heirs 851
Expenses exempted 852
Certain profits exempted 853
Not due in certain co-partnerships 854
When building not subject to 855
When revenue and interest due 856
Only due by heir to co-heir 957
How made 858
When made in kind 859
When made by taking less 860
Expenses for improvements to be counted 861
Expenses for preservation likewise counted 862
Donee must account for damage and injuries 863
What due if real estate has been conveyed 864
Effect of, when made in kind 865
How made of surplus 866
Heir to retain enjoyment of real estate 867
Of personal property made by taking less 868
Of money, how made 869

ART.

COLONIES.
Property of minor in colonies, how administered 417

COMMON CARRIERS. (See FILIATION MARRIAGE AND PATERNITY).

COMMONREPUTE. (See CARRIERS BY LAND OR WATER).
Effect in connection with marriage 195
Effect when coupled with record of marriage 196
Legitimacy resulting from 197
When sufficient to prove legitimacy 320
How established 321
Effect upon status.. 322

COMMONAGE.
How right lost 648

COMMUNITY OF PROPERTY BETWEEN HUSBAND AND WIFE.
When it commences 1399
Legal community 1400
What it is composed of 1401
What real estate considered an acquest 1402
Cut of wood and products of quarries form part of 1403
What real estate does not form part of 1404
Donations of real estate do not form part of 1405
Certain other real estate does not form part of 1406
Real estate acquired by exchange 1407
Real estate purchased 1408

Liabilities of.
What they are composed of 1409
Liability as to debts 1410
Debts of successions of personalty 1411
Debts of successions of real estate 1412
Debts of successions of real estate devolved upon the wife .. 1413
Debts of succession partly personal, partly real 1414
How proof made, if no inventory 1415
Rights of creditors 1416
To what property creditors limited 1417
As to debts in connection with donations 1418
Rights of wife's creditors 1491
How certain debts of wife paid 1402

Administration of, and Effects of Acts of Husband and Wife.
Husband has sole management 1421
What he can dispose of 1422
Donation by husband, how limited 1423
How fines imposed against husband, enforced 1424
How sentences against husband and wife, carried out 1425
Validity of acts performed by wife 1426
Wife cannot bind herself 1427
Husband manages individual property of wife 1428
Effect of leases made by the husband 1429
When leases void 1430
When wife only presumed bound as surety 1431
Remedy of husband against wife for his guarantee 1432
How proceeds of sale of realeestate, taken 1433
Reinvestment of proceeds 1434
Declaration as to reinvestment 1435
Proceeds of sale how taken 1436
When husband or wife owe repayment 1437
Contribution to endowment of child 1438
How dowry given to child charged 1439
Dowry to be guaranteed 1440

Dissolution of, and its consequences
How dissolved 1441
Effect of failure to make inventory 1442

	Art.
When wife can sue for separation of property	1443
When separation void	1444
Notice of separation necessary	1445
When wife's creditors can apply for separation	1446
Husband's creditors can attack separation	1447
Wife's obligations after separation	1448
Management of wife's property after separation	1449
Husband's liability after separation	1450
When community can be re-established	1451
Rights of wife after dissolution of	1452
Acceptance and renunciation.	
Right of wife to accept or renounce	1453
Interference stops right to renounce	1454
When wife cannot renounce.	1455
Right to renounce, how retained	1456
Renunciation, how made	1457
Time to renounce, may be extended	1458
When right to renounce not forfeited	1459
When renunciation invalid	1460
Time allowed heirs to renounce in case of	1461
When renunciation supposed	1463
Creditors of wife may attack renunciation	1464
Right of widow to food and rent	1465
Right of heirs to renounce	1466
Of division after acceptance.	
Effect of acceptance	1467
What is returned	1468
Sums to be returned	1469
What the husband or wife takes	1470
Repayments to wife take precedence	1471
Husband's right to take back, how enforced	1472
What interest due	1473
How surplus divided	1474
If only one heir accepts	1475
How division effected	1476
Penalty in case of concealment	1477
Claim of husband or wife, how enforced	1478
Interest on claims of husband or wife	1479
Donations how paid	1480
Wife entitled to payment of mourning	1481
How debts paid	1482
Liability of wife	1483
Liability of husband	1484
His liability as to wife's personal debts	1485
Wife's remedy against husband if sued	1486
Wife can only be sued for half of debt	1487
Wife cannot claim back payment made in excess	1488
As to respective rights of husband and wife, if sued	1489
Obligation of coparceners	1490
Same rules apply to heirs	1491
What rights lost by wife who renounces	1492
What she takes back	1493
To what extent wife who renounces is released	1494
Her right to maintain actions	1495
Provision in case of children of previous marriage.	
Rules applying in such case	1496
Conventional community.	
Legal community may be modified	1497
What provisions can be made	1527
By what rules governed	1528
Community reduced to acquests.	
When it exists	1498
What property supposed to be acquests	1499

ART.

Exclusion of property from community.
What property can be excluded 1500
Effect of such exclusion 1501
Proof as to contribution 1502
Rights of husband and wife upon dissolution 1503
Inventory to be made 1504

Conversion. (See CONVERSION CLAUSE).

Separation of debts. (See SEPARATION OF DEBTS).

Right of wife to take back her contribution.
Stipulation may be made to that effect 1514

Conventional preciput. (See PRECIPUT).

Clauses awarding unequal shares to husband and wife.
Survivor may be given unequal share. 1520
Liability as to debts reduced in proportion 1521
Agreement to claim only a certain sum 1522
Agreement may be limited to heirs 1523
Liability of husband or heirs 1524
Survivor may take everything 1525

Community under universal title.
Can be established by marriage contract 1526
Special provisions 1527, 1528

Conditions excluding community.
Effect of 1529
Rights of wife 1530
Management by husband 1531
Statement and appraisal to be made 1532
Liability of husband for usufruct 1533
Wife may collect certain portion of income 1534
How real estate can be sold 1535

COMPENSATION.
In case of legacies to physicians, etc 909
Penalty amounts to 1229
Obligations extinguished by 1234
When it takes place 1289
Takes place as a matter of right 1290
Between what debts 1291
Days of grace not an obstacle to 1292
When not taken into account 1293
Surety may set up 1294
Cannot be set up after assignment 1295
When expenses of delivery to be paid 1296
When several debts are due 1297
When does not take place, because prejudicial 1298
When preferences and mortgages cannot be set up 1299

COMPOUND INTEREST.
When can be stipulated 1154
When due 1155

COMPROMISE.
How made by guardian 467
Right to may be withdrawn 499
Action for rescission how affected by 888
Must be expressed in power of attorney 1989
Definition 2044
Who can 2045
As to rights resulting from misdemeanor 2046
Penal clause 2047
Is confined to its object 2048

ART.

Effect of 2049
Effect upon right subsequently acquired 2050
When several persons interested 2051
As binding as final judgment 2052
When can be set aside 2053
Action to set aside 2054
When void 2055
Of a suit, when void 2056
Effect of general 2057
Errors of calculation to be corrected 2058

CONCEALMENT.
Effect of, upon heirs 792
Guilty heir forfeits benefit of inventory 801
Effect upon widow 1460
Effect upon husband or wife 1477

CONCEPTION.
Paternity of child conceived in wedlock 312
One not conceived cannot inherit 725
Same rule applies to donation 906

CONDITION. (See Obligations).
When obligation conditional 1168
What is a fortuitous 1169
What is a potestative 1170
What is a mixed 1171
When void 1172
Effect of, not to do an impossible thing.. 1173
Effect of potestative 1174
How to be fulfilled 1175
When dependent upon an event 1176
When dependent upon event not happening 1177
When supposed to be fulfilled 1178
Retroactive effect 1179
Rights of creditors 1180
When suspensive 1181
Effect of suspensive 1182
When resolutive 1183
When implied 1184

CONSENT. (See Community, Donations, Dotal System, Obligations and Wills).
Wife cannot sue without 215
When husband's consent unnecessary 216
Necessary for validity of contract 1108
When valid 1109
Cancellation of contracts by mutual 1134
Effect upon obligation to deliver 1138

CONSIGNATION. (See Tender)
Effect of 1257
When valid 1259
Expense of, by whom borne 1260
When can be withdrawn 1261
When cannot be withdrawn 1262
Effect of consent of creditor to withdrawal 1263

CONSTRUCTIONS. (See Plantations).
Right of owner to make 552
By whom supposed to have been made 553
Liability of owner 554
Right of owner when made by third party 555
Damage caused by bad 1386
Responsibility for fire resulting from bad 1733

CONTESTED CLAIM.
When legal right disputed 1700

ART.

CONTRACTS. (See Architects, Capacity, Consent, Damages, Error, Fraud, Inadequacy, Interpretation, Jobs, Interest, Marriage Contracts, Obligations, Quasi Contracts and Violence).

Definition .. 1101
Synallagmatic .. 1102
Unilateral .. 1103
Commutative .. 1104
Of benevolence .. 1105
Onerous .. 1106
Subject to certain rules .. 1107
Conditions essential for validity .. 1108
Effect of error, violence or fraud .. 1117
Person can usually only bind himself .. 1119
Person can answer for another .. 1120
When person can stipulate for another .. 1121
Person is presumed to have only stipulated for himself .. 1122
Object of .. 1126
Use or possession sufficient object .. 1127
What things they can apply to .. 1128
Things must be specified .. 1129
Future things .. 1130
Licit cause necessary .. 1131
Cause need not be expressed .. 1132
What is illicit cause .. 1133
Effect of .. 1134
As to what they apply .. 1135
To whom they apply .. 1165
Rights of creditors .. 1166
What acts creditors may attack .. 1167

CONTRACTORS.

Hiring of .. 1779
Liability if building destroyed .. 1792
When cannot ask for increase of price .. 1793
How compensated if work stopped .. 1794
Contract expires by death .. 1795
When their estates entitled to compensation .. 1796
Responsible for employees .. 1797
When released from guarantee .. 2270

CONTRIBUTIONS.

Wife may stipulate return of .. 1514

CONVERSION CLAUSE.

Definition .. 1505
Can be limited or unlimited .. 1506
Effects of limited .. 1507
Effects of unlimited .. 1508
When an inheritance has been so converted .. 1509

CONVEYANCES. (See Community, Dotal System, Paraphernal Property and Separation of Property).

Property of absentee .. 128
Wife's right to make .. 217
How guardian can make .. 457
How emancipated minor can make .. 484
When person prevented from conveying .. 499
How interdicted person can make .. 509
How spendthrift can make .. 513
Effect by heir of hereditary rights. .. 780
As to prospective rights to succession .. 791
Husband can convey community property .. 1421
Succession of living persons cannot be conveyed .. 1600

COPARCENERS.

Preference as to real estate .. 2103
How preference retained .. 2109

ART.

COPIES. (See INSTRUMENTS).
What proof 1334
When original destroyed 1335
Effect of transcription 1336

COPING.
Indication of ownership of wall 654

CORBEL.
Indication as to ownership of wall 654

CORRECTIONS.
When to be approved and signed 42

CORROSIVE SUBSTANCES.
Distance to be left 674

COUNCIL. (See FAMILY COUNCIL).

COUNTER MURE.
Obligations relating to 652

COUNTIES.
What is county property 542
Donations to poor of county must be authorized 910
How such donation accepted 937
How they can compromise 2045

COURT EXPENSES.
Are preferred 2101
How paid 2105

COUSINS.
When they can oppose marriage 174
How degrees counted 738

COWS.
When lessor retains ownership 1831

CREDITORS. (See RANK).
May call family council 406
Declaration of guardian when creditor of minor 451
Rights of creditors of usufructuary 622
When they can accept an estate 788
May compel beneficiary heir to give security 807
Attaching creditors how paid 808
Remedies of those who have not attached 809
May have seals affixed 820
When separation of estates cannot be asked for 881
Can make use of all debtor's rights 1166
When they can attack debtor's acts 1167
Their rights against community property 1416
How payment of wife's debts enforced 1419
How can apply for separation of wife's property 1446
Can attack separation of property 1447
Can set up prescription 2225

CREW.
When one of, falls overboard and disappears 87

CROPS.
When real estate 520
Preferred claims to 2102

CRUELTY.
Cause of divorce 231
Cause of revocation of donation 955
Also cause of revocation of will 1046

ART.

CULTIVATION.
When animals placed on land are real estate 522
Nature of things placed on land for 524
Expense of, in case of use 635
Lessor may have lease cancelled for want of 1766

CURATOR.
When he can oppose marriage 195
When curator ad ventrem to be appointed 393
To assist emancipated minor upon accounting 480
When emancipated minor requires his consent 482
To be appointed to vacant successions 812
His duties 813
Rules applying in case of vacant succession 814
When appointed to deaf and dumb person 936
Must have transcription of donation made 946
Appointment in case of abandonment of real estate 2174

CUSTODIAN.
His obligations 1962

CUSTOMS.
Rights of usufructuary according to 593
Former customs repealed 1390

D

DAMAGES. (See Leases).
When due for non-performance of obligation 1146
When not due in case of non performance 1147
When not due 1148
What they are due for 1149
How limited 1150
Only due for immediate consequences 1151
When agreed upon 1152
When limited to interest 1153
When co-debtor not liable 1205
Injuries caused by a person or by those for whom he is liable 1384
Responsibility of owner of animal 1385
Responsibility of owner of building 1386
Husband's responsibility as to wife's property 1428
For failure to deliver 1611
When vendor owes them 1645
In case of an exchange 1705
When lessee liable for 1732
Further responsibility of lessee 1735
When tenant in case of ejectment is entitled to 1745
When farmer entitled to 1746

DATE.
To be given in records of civil status 34
Not to be written in figures 42
To be given in records of birth 57
Of instruments under private signature 1328
When liability of community for personal debts begins 1410
Effect of lease with positive 1743
Effect of lease without positive 1750

DAUGHTER-IN-LAW. (See Sons-in-Law).

DAYS OF GRACE.
Are not an obstacle to compensation 1292

DEAF AND DUMB PERSONS.
When curator to be appointed to 936

ART.

DEATH.
Rules as to burial 77
Records of death, how drawn up 78
What they shall contain 79
Special rules as to deaths in hospital, etc 80
Rules in case of violent death 81
All particulars to be given 82
Rules in case of capital punishment 83
When takes place in prison 84
When records not to contain circumstances of 85
During sea voyage 86
In case of loss at sea 87
In case of total loss at sea 88
Declaration of presumption of death 89
How established by judgment 90
How judicial declaration obtained 91
Judgments to be recorded 92
Dissolution of community by 1441
Rights of wife as survivor 1452
Preciput takes effect upon 1517
Partnership expires by 1865
Power of attorney expires by 2003

DEBTS. (See Succession).

DECEIT.
Effect of, in case of gaming or betting 1967

DEEDS. (See Instruments).
When incipiency of written proof 324
To whom given after division 842

DEFEASANCE.
Effect of 1321
What required for validity 1396

DEFECTS. (See Flaws and Warranty).
Covered by warranty 1625
Vendor's responsibility 1641
When action to be brought 1648

DELAY. (See Damages).
Damages for 1153

DELIVERY.
Not necessary in donations 938
Effect of obligation to give as to 1136
When obligation to deliver complete 1138
When a special corpus due 1264
Obligations of vendor 1603
Definition 1604
How fulfilled as to real estate 1605
Of personal property, how made 1606
Of incorporeal property 1607
Expense of, by whom paid 1608
Where to be made 1609
Effect of failure to make 1610
Damages for failure to make 1611
Purchaser to pay price before 1612
Nor due if purchaser bankrupt 1613
In what condition thing must be 1614
Accessories must be included 1615
Quantity to be delivered 1616
Dimension of real estate 1617

DEMAND. (See Obligation with penalty).
How made 1139

ART.

Effect of destruction after 1205
Effect of destruction before 1302
Its effect in sale of real estate 1656
By mortgagee 2169
Must be made before ejectment 2217
Interrupts prescription 2244

DENIAL OF JUSTICE.
When judges guilty of 4

DENUNCIATION.
Heir must denounce murder 727
Effect of failure to denounce 728

DEPOSITS. (See Destruction).
Definition 1915
Kinds of 1916
Nature of 1917
To what they apply 1918
When complete 1919
Are voluntary or obligatory 1920

Voluntary deposits.
How made 1921
By whom they can be made 1922
How proved 1923
How proved when no writing 1924
Between what persons can take place 1925
Action for restitution 1926

Obligations of depositary.
Their extent 1927
When provisions more strictly applied 1928
Liability 1929
Use of thing deposited 1930
If things sealed 1931
Return of 1932
In what condition to be returned 1933
When thing taken away 1934
Responsibility of heir 1935
Revenue of thing produced 1936
To whom to be returned 1937
Proof of ownership 1938
To be returned to heir in case of death 1939
Change of status of depositor 1940
When made by a guardian, etc 1941
Where restitution made 1942
If place of restitution not specified 1943
When to be returned 1944
When depositary in bad faith 1945
When depositary is owner 1946
Obligation of person making deposit 1947
Depositary may retain 1948

Obligatory Deposits.
Definition 1949
Proof of 1950
Rules applying to 1951
Responsibility of innkeepers etc 1952
Their responsibility in case of theft etc 1953
When not responsible 1954

DERELICTION. (See Alluvion).
Belong to Public Domain 538
When they belong to owner of bank 557

DESCENDANTS. (See Successions)

ART.

DESCENT. (See MATERNAL AND PATERNAL DESCENT).

DESTINATION.
Effect of .. 692
When it exists .. 693

DESTRUCTION. (See DEPOSITS and OBLIGATIONS).
Proof of deposits made in case of .. 1348
Responsibility of owner of building .. 1386

DILAPIDATIONS. (See DAMAGES and INJURIES).
Usufructuary must notify owner .. 614
Donee must account for .. 863
Liability of lessee .. 1739

DISPENSATIONS. (See MARRIAGE).
For marriage, when granted .. 145
Fine if not obtained when required .. 192

DISPOSAL OF PROPERTY. (See PORTION OF PROPERTY WHICH CAN BE DISPOSED OF).

DISTANCES.
To be kept for certain constructions .. 674
For straight view, balconies, etc .. 678
For side view .. 679
How measured .. 680

DISTRIBUTION. (See DIVISION).

DITCHES. (See PARTY WALL and SERVITUDES).
Indications as to joint ownership .. 666
Repairs to common enclosure, how affected by .. 667
Rights of owner .. 668

DIVISION OF SUCCESSIONS. (See SUCCESSIONS).
How absentee to be represented. .. 113
How made by guardian .. 465
When must be judicial .. 466
Can always be demanded .. 815
When can be applied for .. 816
When there are minors or interdicted persons .. 817
Husband may apply for .. 818
Formalities and affixing of seals .. 819
Creditors may have seals affixed .. 820
As to removal of seals .. 821
Action for, where brought .. 822
How action conducted .. 823
Valuation of real estate .. 824
Valuation of personal property .. 825
Heirs can claim shares in kind .. 826
When judicial sale of real estate necessary .. 827
Proceedings after sale .. 828
What property to be returned .. 829
How returned .. 830
How balance divided .. 831
Rule as to formation of shares .. 832
How unequal shares compensated .. 833
How shares made up and lots drawn .. 834
Objections to composition of shares .. 835
Rules as to subdivisions .. 836
When controversies occur .. 837
When it must be made judicially .. 838
Judicial sale of real estate, how made .. 839
When it is final .. 840
Assignee may be excluded from .. 841
Deeds, to whom given .. 842
When rescission can take place .. 887

	Art.
Action for rescission	888
Fathers and mothers may divide their property	1075
How they can do so	1076
When all the property not divided	1077
When void	1078
Can be attacked	1079
Costs by whom paid	1080

DIVORCE.

When husband may sue for	229
When wife may sue for	230
When both may sue for	231
Degrading punishment a cause for	232
How action commenced	234
Both parties to appear before the Judge	235
Separate residence of husband and wife	236
Service of order	237
Proceedings upon appearance of both parties	238
Further proceedings	239
Provisional measures	240
Proof as to residence of wife	241
How protective measures obtained	242
Effects of first order	243
Effect of reconciliation	244
How investigation made	245
Tribunal may suspend jugdment	246
Measures in case personal service not made	247
Appeal	248
Judgments cannot be assented to	249
Publication of judgment	250
Transcription of judgment	251
Transcription how made	252
Articles repealed	253 to 294
Effects of divorce	295
When wife can remarry	296
Remarriage of wife	297
Effect of divorce for adultery (Repealed)	298
Loss of rights and use of name	299
Advantages retained by successful party	300
Alimony after divorce	301
Custody of children	302
Rights of father and mother over children	303
Children's rights not affected by	304
Rights of children after divorce by consent (repealed)	305

DOCTORS.

Declaration of birth by	56
Duties in case of violent death	81
When not entitled to donations or bequests	909
When claims outlawed	2272

DOMAIN. (See Public Domain).

DOMICILE. (See Nationality and Law on Nationality).

As to marriage, how established	74
Where it is	102
Change of	103
Proof of intention	104
When intention depends upon circumstances	105
Of public officer	106
Effect of acceptance of office for life	107
Of married women	108
Of employees	109
Where succession becomes open	110
Election of	111
Election of, in notices of opposition to marriage	176
Tenders to be made at	1258
Writ of demand, when to be made at	1264

ART.

DONATIONS INTER VIVOS. (See ENTAILS, INSTRUMENTS, PORTION OF PROPERTY WHICH CAN BE DISPOSED OF, RESTITUTION AND WILLS).

How persons can dispose gratuitously 893
Definition 894
Conditions which are impossible or contrary to law 900
Donor must be of sound mind 901
Who can give or receive 902
Minors cannot make 903, 904
Married woman requires husband's consent 905
One must be conceived to take 906
Rights of natural children 908
When physicians, surgeons and druggists cannot take 909
Public institutions must be authorized to take 910
When void because made through intermediaries 911
Portion of property which can be disposed of by 913
When reduced 920
Who can ask for reduction 921
How reduction made 922
Property bequeathed must be exhausted before reduction of .. 923
Heir can retain his portion 924
How reduction takes place 926, 927
Income to be returned 928
Real estate to be returned unencumbered 929
Action for reduction or restitution 930
Form of instruments containing 931
Not binding until accepted 932
How acceptance made 933
Acceptance by married woman 934
Acceptance for minor and by emancipated person 935
Acceptance by deaf and dumb person 936
Acceptance for hospitals or the poor 937
When final 938
Recording of 939
By whom recording to be made 940
Responsibility for failure to record 941
Effect upon minors, interdicted persons and married women .. 942
What property can be included 943
When void 944
When void owing to condition of payment of debts 945
When right to dispose of an article is reserved 946
Certain donations exempt from ordinary rules 947
Of articles of personal property, when valid 948
Enjoyment or usufruct can be reserved 949
When usufruct reserved 950
Right to retake articles given can be stipulated 951
Effect of such right 952
Grounds for revocation of 953
Effect of revocation 954
When revocable on account of ingratitude 955
When revocation not a matter of right 956
Action for revocation on account of ingratitude 957
Conveyances and encumbrances made by donee, how affected .. 958
Certain donations not revoked for ingratitude 959
When revocation a matter of right 960
Such revocation takes place even if child conceived 961
When donee not bound to return the revenues 962
Property to return free from encumbrances 963
Cannot be revived after revocation 964
When renunciation of right of revocation void 965
When prescription can be set up against revocation 966
Can be made with reversion to grandchildren 1048
To brothers and sisters with reversion, when valid 1049
How made when containing clause of restitution 1069

To husband and wife.
To what rules subjected 1081
To what property they extend 1082

ART.

When irrevocable 1083
May be of present or future property 1084
When schedule not annexed 1085
Can be made under condition of paying debts 1086
Acceptance not required 1087
Void if marriage does not take place 1088
Effect of survivorship 1089
When reduced 1090
Can be made reciprocally by husband and wife 1091
Not supposed made under condition of survivorship 1092
Subject to same rules as those made by third parties 1093
What property husband and wife can thus dispose of 1094
Rights of minor 1095
When made during marriage are revocable 1096
When reciprocal cannot be made by same instrument 1097
Extent of, in case of former marriage 1098
Void if disguised or made through intermediaries 1099
When considered made through intermediaries 1100

DOTAL SYSTEM. (See MARRIAGE CONTRACTS, PARAPHERNAL PROPERTY).
Settlement of dowry on child of interdicted person 511
Stipulation as to 1391
What is dowry 1540
What is dotal property 1541
What settlement of dowry may include 1542
Dowry cannot be given or increased during marriage 1543
When dowry settled by father and mother 1544
How dowry taken after death of father or mother 1545
Taken out of property of father or mother 1546
Warranty of dowry 1547
Interest on dowry 1548
Management by husband of dotal property 1549
Husband not bound to give security 1550
When husband becomes owner of personal articles 1551
When ownership of real estate transferred 1552
When real estate becomes dotal 1553
Real estate cannot ordinarily be conveyed 1554
Dotal property may be given for establishment of wife's children 1555
Same rule as to children of the marriage 1556
When wife may give dotal property for benevolent purposes .. 1556
Conveyance of real estate may be allowed by contract 1557
Real estate may be sold by order of the Court 1558
Real estate may be exchanged 1559
Right of wife or her heirs to set conveyance aside 1560
When prescription does not run 1561
Obligations of husband 1562
Remedy of wife if dowry endangered 1563
How dowry returned 1564
How dowry returned in other cases 1565
How dowry returned in case of destruction of property 1566
Liability of husband for loss 1567
If dowry comprises usufruct 1568
Proof of payment after ten years 1569
When interest runs upon property to be returned 1570
Division of revenue at dissolution of marriage 1571
The wife has no preference for return of dowry 1572
Liability of wife in case of husband's insolvency 1573
Partnership of acquests may be stipulated 1581

DOWRY. (See DOTAL SYSTEM).

DRUGGISTS.
When not entitled to donations or bequests 909
Entitled to preference 2101
When their claims are outlawed 2272

DURESS. (See VIOLENCE).

ART.

E

EARNEST MONEY.
Effect of payment of 1590
When paid in case of unwritten lease. 1715

EDUCATION OF CHILDREN.
Rights of mother upon disappearance of father 141
Right of enjoyment of father or mother subject to payment of . 385
Expenses of, not collated 852
Expenses of, to be paid by community 1409
When wife must contribute to 1448

EJECTMENT.
Responsibility of heirs in case of. 884
Vendor must warrant against 1626
When such warranty ceases 1640
When party dispossessed in case of exchange 1705
Creditor may sue for 2204
Undivided share, how sold out 2205
Real estate of minor 2206
When seizure not necessary 2207
Ejectment from real estate of community 2208
When mortgagee can sue for 2209
Forced sale when property situated in different districts 2210
How such sale applied for 2211
When proceedings stayed 2212
How forced sale applied for 2213
When notice required 2214
Proceedings for 2215
When proceedings cannot be dismissed 2216
Demand to be made before proceeding 2217
When prescription begins to run in case of 2257

EMANCIPATION.
When takes place by right 476
When can take place 477
When can take place on death of both parents 478
When relatives may petition for 479
How guardian's accounts rendered 480
Rights of emancipated minor 481
How he can sue 482
Emancipated minor cannot borrow 483
Other acts he cannot perform 484
When withdrawn 485
Effect of withdrawal of 486
Emancipated minor's rights, if in trade 487

EMPLOYEES.
Responsibility of employers for injuries to, ... 1384

EMPLOYERS.
When responsible 1384

ENCLOSING PROPERTY. (See BOUNDARIES and PARTY WALL).
Right of owners 647
Loses his right to commonage, etc 648
Neighbors must contribute to construction or repairs 663
When enclosure supposed to be held jointly 666
How common enclosure kept in repair 667

ENJOYMENT.
Of civil and political rights 7
Right of surviving father or mother 384
Father and mother can keep personal property 453
They are not obliged to give security 601
Children of unworthy heir not entitled to 730
Non-existence of inventory deprives husband or wife of 1442

ART.

ENTAILS.
Are prohibited .. 896
Provisions allowed .. 897
What provisions not considered as .. 898
When same rule applies in case of usufruct .. 899

ERROR.
Vitiates consent .. 1109
When a cause of avoidance of contract .. 1110
When action for avoidance of contracts outlawed .. 1304
As to sums expressed in instruments .. 1327
As to judicial admission .. 1356
If person receives a thing by mistake .. 1376
Compromises cannot be attacked on account of .. 2052
Of calculation to be corrected in compromises .. 2058

ESTABLISHMENT.
Children have no claim for .. 204
Collation due for .. 851
How wife can bind herself for .. 1427
How wife may give her dotal property for .. 1555

ESTIMATES. (See JOBS).
Hiring on .. 1711, 1779

EVIDENCE. (See PROOFS).

EXCAVATIONS. (See CONSTRUCTION).
Right of owner to make .. 552

EXCEPTIONS.
Surety may set up all those belonging to debtor .. 2036

EXCHANGES.
Of real estate during the marriage .. 1407
Of dotal real estate .. 1559
Definition .. 1702
How they take place .. 1703
When one of the party is not the owner .. 1704
Remedy of party who is dispossessed .. 1705
No rescission for loss .. 1706
Are governed by rules applying to sales .. 1707

EXECUTION AGAINST THE PERSON.
Articles 2059 to 2076 repealed.

EXECUTORS.
Appointment by testator .. 1025
May be given seizin for one year only .. 1026
Heir can put an end to seizin .. 1027
Who can be .. 1028
Married women require consent .. 1029
Minors cannot be .. 1030
Must have seals affixed and inventory made .. 1031
Their powers personal to them .. 1032
One may act without the others .. 1033
Their expenses to be paid .. 1034

EXPENSES. (See COLLATION, COURT EXPENSES and HOUSEHOLD EXPENSES).
Payable by person to whom thing is returned .. 1381
When vendor liable for, in case of ejectment .. 1634
Right of third party in possession to repayment of .. 2175

EXPERTS.
Real estate of absentee to be appraised by .. 126
Appraisement of property of minor .. 453

ART.

Appraisement by, in divisions 466
Appraisement of real estate of succession 824
When shares to be made up by 834
Estimate by, upon exchange of dotal property 1559
Proof of inadequacy in sales to be made by 1678
Rule as to their report 1679
How appointed 1680

EXPIRATION OF CONTRACTS. (See CONTRACTS and LEASES).

EXTENSION.
Surety not released on account of 2039

F

FAITH. (See BAD FAITH and GOOD FAITH).

FAMILY COUNCIL. (See ANNULMENT OF MARRIAGE and GUARDIANS).
Duties of, upon father's disappearance 142
When consent of, required for marriage 160
Relatives who can oppose marriage with consent of 174
Who can attack marriage entered into without consent of .. 182
When duties to be exercised by Court 389
Must be called if mother wishes to remarry 395
Guardian selected by mother to be confirmed by 400
As to guardians appointed by father and mother 401
When to select guardian among ancestors .. .. .. 402 and s.
To appoint guardian 405
How called together 406
How composed 407
What persons are members by right 408
In case of insufficient number of relatives 409
Relatives living away may be cited 410
Time to appear after citation 411
Appearance by attorney-in-fact 412
Fine in case of non appearance.. 413
When adjournment may take place 414
Where meeting held 415
By whom presided over 416
Assistant guardian appointed by 420
When guardian must call together 421
To be called if guardian entitled to resign 431
Who cannot form part of.. 442
Persons excluded from guardianship cannot belong to 445
Removal of guardians to be ordered by 446
Motives of renewal to be given by 447
Proceedings if guardian objects 448
Who can take part in suit for removal 449
When guardian requires consent of 450
Expenses to be incurred by guardian how limited by 454
To decide when guardian bound to invest 455
When obligation of guardian to invest not specified by 456
Guardian cannot borrow, etc., without consent of 457
When decisions of, to be approved by the Court 458
Consent of, necessary for acceptance or refusal of succession .. 461
When succession can be taken up again with consent of 462
Consent of, necessary for acceptance of donation.. 463
When consent of, necessary for guardian to bring suit 464
Consent of, also necessary to make division 465
Consent of, necessary for guardian to compromise 467
Guardian can complain to, of minor's conduct 468
To determine when guardian shall furnish accounts 470
Decides as to emancipation 478
Who can have meeting called, to emancipate minor 479
Consent necessary to withdraw emancipation 485

	Art.
To give its opinion in case of interdiction	494
To regulate administration of wife as guardian	507
Decides how interdicted person shall be cared for	510
As to settlement of dowry of child of interdicted person	511
FARM RENTS. (See Rents).	
When they bear interest	1155
When entitled to preference	2102
FARMERS. (See Cattle and Leases).	
FARMING IMPLEMENTS.	
When real estate by destination	524
When supposed included in donations	1064
Lessee's obligation as to	1766
Preference as to	2102
FATHERS AND MOTHERS. (See Adoption, Division, Donation, Emancipation, Enjoyment, Guardians, Marriage, Minority, Paternal Authority, Successions and Wills)	
Lose right of enjoyment in case of divorce	386
Can accept donation for minors	935
Can give property to children with reversion to grandchildren	1048
How can dispose of property by marriage contract	1082
Are responsible for injuries caused by children	1384
FERRYBOATS.	
Are personal property	531
FILIATION. (See Common Repute, Paternity and Repudiation)	
Of child conceived during marriage	312
Proof of filiation	319
When common repute sufficient	320
What establishes status	322
How proof made in certain cases	323
Incipiency of documentary evidence	324
How disproved	325
Jurisdiction of Courts as to status	326
Criminal action for suppressing status	327
Action never outlawed	328
When action can be brought by heirs	329
Heirs can continue action	330
FINES.	
Imposed upon husbands	1424
FIRE.	
When building subject to usufruct is destroyed by	624
As to written proof of deposit, destroyed by	1348
Responsibility of lessee	1733
When there are several tenants	1734
Obligatory deposit resulting from	1949
FIRE-PLACE.	
Distance to be left in building	674
Repairs to, upon whom incumbent	1754
FIRST COUSINS. (See Cousins).	
FIRST NAMES. (See Names).	
FISH.	
When real estate by destination	524
Ownership when they go into another pond	564
Right to	715
FLAWS.	
As to possessor in good faith	550
Effect of, in instruments	1338

ART.

FLOATING BATHS.
Are personal property 531

FLOODS.
Lessee not responsible in case of 1773

FLOORS.
By whom repairs to be made 664
Height of windows above 677

FLOTSAM AND JETSAM.
Rights to 717

FODDER.
Obligation of incoming farmer as to 1777

FOOD. (See SUPPORT).

FORCE. (See SUPERIOR FORCE).

FOREIGN COUNTRY. (See NATIONALITY and NATURALIZATION)
Faith to be given to records made in 47
Validity of records relating to Frenchmen 48

FOREIGNERS. (See ALIENS)..

FOREST TREES. (See TREES)
When personal property 521
Right of usufructuary to 591

FORGERIES.
Effect of, in records of civil status 52

FORTIFICATIONS.
Ownership of 541

FORTIFIED CITIES.
Form part of public domain 540

FORTRESSES. (See FORTIFIED CITIES).

FORTUITOUS EVENT. (See ACCIDENT BY).

FRAUD.
Removal of guardian for 421
When acceptance of succession can be attacked for 783
Rescission of division for 887
Vitiates consent 1109
When it vitiates contracts 1116
What damages due if non-performance does not result from .. 1150
When creditors defrauded 1167
Action for rescission of contracts, when maintainable 1304
Proof when instrument attacked on account of 1353
When creditor can attack separation of property 1447
Responsibility of attorney-in-fact in case of 1992
Vitiates compromises 2053

FREE PASTURAGE.
Right to, lost by enclosing property 648

FREEING PROPERTY. (See SATISFACTION OF MORTGAGES).

FRIENDS.
When members of family council 409
Must appear or be represented 412
Fine for non-appearance 413

ART.

FRUITS. (See REVENUE and USUFRUCT).
Are real estate until gathered 520
When they belong to owner 547
Obligation of owner to pay certain expenses 548
Rights of possessor 549
Rights of usufructuary 582
Rights of person having use 630
When expenses of cultivation to be paid 635
Of trees in hedge held jointly 670
Fallen from trees on neighbor's estate 673

FURNACE. (See OVEN).

FURNISHED HOUSE.
What included in sale or donation of 535

FURNISHING MOVABLES
What they include 534

FURNITURE. (See PERSONAL PROPERTY).

G

GAMES (See BETTING).
Action for gaming debt 1965

GIFTS.
Wedding gifts not subject to collation 852

GOOD FAITH.
Right of possessor to fruits if in 549
When possessor is in 550
When person receiving thing has sold it 1380
Engagements by attorney-in-fact toward parties in 2009
Is always presumed 2268
Is sufficient at time of acquisition 2269

GRAIN. (See CROPS).
Not included in word "movable" 533
How returned in case of usufruct 587

GUARANTEE. (See WARRANTY).

GUARDIANS. (See ASSISTANT GUARDIAN, CO-GUARDIAN, SPECIAL and TEMPORARY GUARDIAN, INTERDICTION, MINORS, RESTITUTION and SPECIAL COUNSEL).
Father is administrator of minor children 389
Right of surviving father or mother 390
Father may appoint special adviser 391, 392
Mother not bound to act 394
Steps to be taken by mother upon remarriage 395
When second husband to act as co-guardian 396
Right of father or mother to select 397
How such right exercised 398
When mother who remarries cannot select 399
Selection by mother who remarries, when valid 400
When guardian appointed by father or mother, not bound to accept 401
When ascendant to act 402
When family council to select 403
When family council to select between ancestors 404
When appointed by family council 405
When minor owns property in the colonies 417
Duties of 418
Guardianship is a personal duty 419

ART.

Causes of exemption.
Who are exempt 427
Soldiers and women are exempt 428
Proof in case of a mission for the State 429
When officials not exempted 430
When officials may be relieved 431
Persons not related only taken in default of relatives 432
Persons over sixty-five can refuse to act 433
Serious infirmity, a cause of exemption 434
Two guardianships a valid excuse 435
Persons having five children are exempt 436
Birth of children during guardianship does not exempt 437
When refusal must be presented 438
Family council to decide upon refusal 439
Can apply to Courts if refusal not accepted 440
By whom costs to be paid 441

Persons incapable of acting.
Who cannot act 442
Persons to be excluded 443
Who can be removed 444
Family council pronounces removal 446
Motives of removal to be given 447
Proceedings in case of objection 448
Who can take part in suit 449

Of their administration.
Powers 450
Removal of seals and inventory 451
Sale of personal property 452
Father and mother not obliged to sell 453
Yearly amount to be spent, how determined 454
Obligation to invest over certain amount 455
When interest owed 456
Cannot borrow or convey without authority 457
When approval of Court necessary 458
How sale made 459
Formalities of the sale 460
As to acceptance and refusal of succession 461
When succession may be retaken 462
How donations accepted 463
Cannot sue without consent 464
Consent required for partition 465
How division made 466
How compromises made 467
Can have minor incarcerated 468
Accountable for administration 469
May be compelled to furnish statements 470
When final account to be rendered 471
Agreement with minor void unless account rendered 472
When account disputed 473
When interest due 474
When actions against guardians outlawed 475
May be appointed for property subject to restitution 1095

H

HABITATION. (See USE).
Widow's right to 1465

HAIL.
Lessee not to pay for repairing window panes 1754
Lessee can be made responsible for damage from 1773

HALF BLOOD. (See RELATIVES).

ART.

HARBORS.
Form part of public domain 538

HEALTH OFFICERS. (See DOCTORS).

HEDGE. (See PARTY WALLS and TREES).
Neighbor cannot compel owner to grant joint right 668
Rights of owners when jointly held 669

HEIRS. (See ABSENCE, ACCEPTANCE, BENEFIT OF INVENTORY and SUCCESSIONS).
Preferred claim of 2103

HERBS.
Crowing on sea-shore regulated by special laws 717

HERD OF CATTLE. (See CATTLE).

HEREDITARY RIGHTS. (See INHERITANCE).

HIDDEN DEFECTS. (See DEFECTS).

HINGES.
Repairs to, incombent upon tenant 1754

HORSES.
Not included in word " movable " 533

HOSPITALS.
Donations to, must be authorized 910
How such donations accepted 937

HOTEL KEEPERS.
Their responsibility for effects of travellers 1952
Their responsibility in case of theft, etc 1953
When not responsible for theft 1954
When their claims outlawed 2271

HOUSE. (See FURNISHED HOUSE).
Child cannot leave his father's house 374

HOUSEHOLD EXPENSES.
Wife after separation must contribute to 1448
How husband and wife contribute to 1537
How wife contributes, if her property paraphernal 1575

HUNT.
Right to, how regulated 1715

HUSBAND AND WIFE. (See ANNULMENT of MARRIAGE, COMMUNITY, DIVORCE, DONATIONS, DOTAL SYSTEM, MARRIAGE CONTRACTS and SUCCESSIONS).

I

ILLNESS (last).
Preferred claims as to expenses relating to 2101

IMBECILITY. (See INTERDICTION).
When interdiction takes place in case of 489

IMPLEMENTS. (See FARMING IMPLEMENTS).

IMPOTENCY.
Husband cannot disown child by alleging 313

ART.

IMPROVEMENTS.
Usufructuary not entitled to indemnity for 599
When husband or wife owe payment of 1437

IMPRUDENCE.
Responsibility in case of 1383

IMPUTATION OF PAYMENT.
Debter can discharge whatever debt he likes 1253
Interest must be paid before capital 1254
Cannot take place after receipt given 1255
How made if receipt does not specify debt 1256
When partner and partnership are both creditors 1848

INADEQUACY. (See EXPERTS and RESCISSION).
When division can be attacked on account of 1079
When vitiates agreements 1118
When vitiates contracts in favor of minor 1305
Effect of cancellation on account of 1313
When vitiates sales 1674
How amount ascertained in sales 1675
When action can be brought 1676
Proof of 1677
Report of experts .. .. 1678 et s.
Effect of action for rescission 1681
If purchaser keeps property 1682
Rescission does not take place in favor of purchaser 1683
Does not take place in public sales 1684
Rules in bringing action for rescission 1685
In exchanges 1706

INCAPACITY. (See DONATION, GUARDIANS and WILLS).
Who are incapable of inheriting 725
Who are incapable of contracting 1124

INCESTUOUS.
Such children cannot be acknowledged 335
Only entitled to nourishment 762

INCOME. (See REVENUE).

INCORPORATION.
Property is acquired by 712

INDEMNITY. (See Leases).
When due by guardian 421
Property cannot be taken without 545
When not due for removing plantations and constructions .. 555
When usufructuary not entitled to. 590
Usufructuary not entitled to, for improvements 599
When due for use of spring 642
When due for raising a party wall 658
When due for right of way 682
When due for management of business 1375
When due for cancelling lease 1744
How fixed if lease applies to house or store 1745
How estimated in case of country property 1746
When to be fixed by experts 1747
When due by principal 2000

INDIRECT ADVANTAGES. (See ADVANTAGES).

INDIVISIBLE. (See OBLIGATIONS).

INGRATITUDE. (See DONATIONS).
A cause of revocation of donations 953
When revocation can take place for 955
Such revocation is never a matter of right 956

	Art.
What donations cannot be revoked	959
Provisions apply also to wills	1046
INHERITANCE. (See Successions).	
How claimed when accrued to absentee	137
Effect of donation or sale of	780
No action lies to prevent sale of hereditary rights	889
Warranty in case of sale of	1696
INJURIES. (See Damages and Loss)..	
When donee must account for	863
Responsibility of carriers by land or water	1784
INNKEEPERS. (See Hotel Keepers).	
Have preferred claim	2102
When claims of, outlawed	2271
INSANITY. (See Interdiction).	
Opposition to marriage on account of	174
INSCRIPTIONS OF MORTGAGES. (See Mortgages).	
Necessary to render preference effective	2106
Exemption from	2107
How vendors rights preserved	2108
By co-heirs or co-parceners	2109
By architects, contractors, etc	2110
By creditors and legatees	2111
Rights of assignees	2112
Prior rights only date from	2113
Rank of mortgages dates from	2134
When mortgages exist independently of	2135
Husbands and guardians must have them made	2136
Duty of assistant guardian	2137
When Republic's attorney must have them made	2138
When relatives must have them made	2139
How made	2146
No priority when made on same day	2147
How made by creditor	2148
How made on property of deceased person	2149
What to be entered on registers	2150
Priority as to interest	2151
Domicile can be changed in	2152
Rule as to certain special mortgages	2153
Duration of	2154
Expenses of	2155
Actions in connection with	2156
How cancelled	2157
Papers to be deposited	2158
Proceedings for cancellation	2159
When cancellation to be ordered	2160
When reduction applies to several pieces of property	2161
When excessive	2162
When effected on appraisal of claims	2163
How excess appraised	2164
How value determined	2165
Cannot be refused or delayed	2199
INSOLVENCY.	
Of heirs or successors under universal title	876
As to guarantee of solvency of debtor owing annuity	886
Loss owing to co-debtor's	1214
When creditor has released assignee	1276
Loss of dowry through husband's	1573
Effect upon delivery by vendor	1613
When partner must return share received	1849
Partnership expires by	1865
Power of attorney expires by	2003

	Art.
Of surety	2020
Rights or surety in case of debtor's	2032

INSTRUMENTS. (See Copies, Public Instruments, Records of Civil Status and Remission of debt).

Effect as to execution	877
When surrender is proof of release	1282
When valid as public instrument	1322
Must be admitted or repudiated	1323
If repudiated, verification must be ordered	1324
When to be made in several originals	1325
When the words " Good for " or " Approved " to be inserted	1326
When amount incorrectly stated	1327
How date made certain	1328
Effect of memorandum written on instrument	1332 et s.
Validity of copies	1334
Effect of instruments acknowledging a thing	1337
Effect of instruments confirming an obligation	1338
Confirmation not sufficient for donations	1339
Effect of confirmation of donation by heirs	1340

INSTRUMENT OF NOTORIETY.

What to contain	71
To be approved by Court	72

INSURANCE.

A contingent contract	1964

INTERDICTION.

When husband interdicted, Court may authorize wife	222
When takes place	489
Who may apply for	490
When Republic's attorney must apply for	491
Where application made	492
Proof of party's unsound mind	493
Opinion of family council to be given	494
Persons excluded from family council	495
Examination of defendant	496
When temporary administrator appointed	497
How judgment rendered	498
Defendant's rights may be curtailed	499
On appeal examination may be ordered	500
Judgments to be entered and recorded	501
Effect of interdiction	502
What acts annulled	503
Annulment of acts after death	504
Appointment of guardian	505
Husband is guardian by right	506
Wife can be guardian	507
When guardianship not compulsory	508
Assimilated to minor	509
How income used	510
Matrimonial settlements upon child of interdicted person	511
When it ceases	512
When interdicted person entitled to rescission	1312
Rule applying to real estate and successions	1314

INTEREST. (See Revenue)

When due	1154
When due from demand	1155
Demand in case of joint debt	1207
Payment of, in case of joint liability	1212
Must be paid before capital	1254
Forms part of assets of community	1401
Included in liabilities of community	1409
Effect of separation of debts	1512
As to dowry	1548
Right of husband to collect	1549

ART.

When purchaser owes 1652
Is legal or conventional 1907
In case of annuity 1909
In case of deposit 1936
When outlawed 2277

INTERMEDIARIES. (See DONATIONS)
When provisions made through, are void 911
When donations considered made to 1100

INTERPRETATION. (See CONTRACTS)
Intention must be sought 1156
Clause susceptible of two 1157
Words susceptible of two 1158
Ambiguous clause 1159
Clauses to be supplied 1160
Clauses to be taken together 1161
In case of doubt 1162
If terms general 1163
When case has been mentioned to explain 1164

INVENTORY. (See BENEFIT of INVENTORY).
In case of absence 113
Necessary when possession granted 126
Guardian must cause to be made 451
By usufructuary 600
In case of use or habitation 626
By surviving husband or wife 769
In case of acceptance of succession 794
By curator 813
In case of vacant succession 814
How removal of seals made 821
By executors 1031
Expenses of, paid by succession 1034
In case of donation 1058
In case of succession accruing to husband or wife 1414
Effect of failure to make 1442
By widow 1456
Must be made to limit wife's liability 1483
Of property of limited community 1499
Of personal property accruing to husband or wife 1504
Of property brought as dowry 1532

INVESTMENT.
By guardian of surplus income 455
Of capital of emancipated minor 482
In case of donation subject to restitution 1065
Husband's responsibility as to 1450
Of real estate purchased with dotal funds 1553
Of surplus of dotal property 1558

IRRIGATION.
Use of water for 644

ISLANDS.
Ownerships of 560
When belong to riparian owner 561
When formed by a river 562

J

JOB. (See ARCHITECTS).
Hiring by the 1779
Agreement as to 1787
Loss of thing 1788
Workman's liability for negligence 1789

Art.

Destruction before work accepted 1790
Work for several pieces or by measure 1791
Master can cancel job 1794
Contract expires by death 1795
Payment after death for work done 1796

JOINT GUARDIAN [illegible]
When required 396

JOINT AND SEVERAL LIABILITY
When it exists between creditors 1197
How debtor can pay 1198
How affected by prescription 1199
When it exists between debtors 1200
How it may exist 1201
Cannot be presumed 1202
Rights of creditor 1203
Effect of proceedings against one debtor 1204
When thing due destroyed 1205
Proceedings suspend prescription 1206
When interest begins to run 1207
Defences which can be set up 1208
Effect of merger 1209
Effect of consent to division 1210
Effect of separate payment 1211
Effect of payment of arrears or interest 1212
How obligation divided 1213
Rights of co-debtor after payment 1214
Insolvency of co-debtor 1214, 1615
When debtor liable for whole debt 1216
Indivisible obligation 1219
Of borrowers 1887

JOISTS. (See PARTY WALL).

JUDGES.
Must decide cases 4
How to decide cases 5
When released from claims for documents 2276

JUDICIAL ADVISER.
When appointed 513
How applied for 544
How judgment given 515

JUDICIAL SALE. (See PUBLIC SALE).

JURISDICTION. (See ALIENS).
Of Courts for obligations contracted abroad 15

K

KEYS.
Delivery of real estate 1605

L

LABOR. (See WORKMANSHIP).

LAKES.
No alluvion in case of 558

LAND. (See ACCRETION, CONSTRUCTIONS and PLANTATIONS).
Is real estate 518
What ownership of, carries with it 552
Lights of usufructuary 624

ART.

LAND BURBENS. (See SERVITUDES).
Right to 543
On tenement of husband or wife 1433

LANDLORD. (See LEASES).
Has preferred claim 2102

LAPSE. (See DONATIONS, LEGACIES and WILLS).

LAWS.
Promulgation 1
No retroactive effect 2
Applying to real estate, personal status and police 3
Applying to public order cannot be derogated from 6
Things belonging to no one, how regulated 714

LEASES. (See COMMUNITY, EMANCIPATION, GUARDIANS and USUFRUCT).
Kinds of 1708
Definition of letting of things 1709
Definition of letting of work 1710
Subdivisions 1711
Of public property 1712
What can be let 1713
How made 1714
Unwritten 1715
Controversy as to verbal lease 1716
Right to sublet 1717
Of property of minors 1818
Obligations of lessor 1719
Delivery of property 1720
Warranty 1721
When property destroyed 1722
Lessor cannot make changes 1723
When repairs needed 1724
Warranty against disturbances 1725
Reduction on account of disturbance 1726
When lessor to be joined in action 1727
Obligations of lessee 1728
Different use entitles to cancellation 1729
When description of property made 1730
When no description made 1731
Lessee's liability 1732
Responsibility in case of fire 1733
Responsibility of each tenant 1734
Lessee liable for persons of his household and his subtenant 1735
Notice to quit, how to be given 1736
Expiration of 1737
When lessee remains over 1738
No tacit renewal after notice 1739
Security given does not apply to extension 1740
Expiration owing to destruction 1174
Does not expire owing to death 1774
How affected by sale of property 1743
Damages for ejectment 2154
Amount of damages 1744
Damages for country property 1746
When indemnity fixed by experts 1747
Privilege to eject, how made use of 1748
Damages to be paid before ejectment 1749
No damages when date not positive 1750
Ejectment in consequence of power of redemption 1751
Tenant must furnish house 1752
Liability of subtenant 1753
What repairs incumbent upon tenant 1754
When tenant not liable for repairs 1755
Lessor to clean wells, etc 1756
Of furniture 1757

	Art.
Of furnished apartments	1758
When occupancy continued after expiration of	1759
Payment of rent in case of cancellation	1760
Lessor cannot cancel	1761
When lessor entitled to occupy house	1762
Farming leases.	
Lessee cannot sublet	1763
When owner can re-enter	1764
When wrong area given	1765
When cancellation allowed	1766
Obligation to house crops	1767
Notice to be given of encroachments	1768
Destruction of crop	1769, 1770
When no reduction due for loss of crops	1771
When lessee responsible for accidents	1772
What included in accidental cases	1773
When unwritten	1774
Expiration of unwritten	1775
When lessee remains over	1776
Obligations of outgoing and entering farmer	1777
Further obligations	1778
Of letting of work and industry.	
Kinds of	1779
Leases of cattle.	
Definition	1800
Kinds of	1801
To what they can apply	1802
How governed if no agreement	1803
Simple lease of cattle	1804
Ownership of cattle	1805
Duties of lessee	1806
Liability for accidents	1807
Proof of accident	1808
Lessee to account for skins	1809
Loss through death of cattle	1810
Prohibited conditions	1811
How lessee can dispose of cattle	1812
When made to farmer of another person	1813
Right to shear	1814
Duration when no time fixed	1815
Suit for cancellation	1816
Appraisal of cattle	1817
Lease of cattle by halves	1818
Rights of lessee	1819
Rules applying to	1820
Rigid lease of cattle	1821
Appraisal does not confer ownership	1822
Profits	1823
What does not from part of profits	1824
Loss of cattle	1825
Obligations of farmer when lease expires	1826
Death of cattle not through negligence	1827
Conditions allowed	1828
Expiration of	1829
Rules applying to	1830
When cows leased	1831
LEGACIES.	
General provision	1002
Universal legacies.	
Definition	1003
When legatee must demand delivery	1004
Enjoyment of universal legatee	1005
When universal legatee seized by right	1006

ART.

When legatee must obtain order of Court 1008
Liability of universal legatee 1009

Legacies under universal title.
Definition 1010
Legatees must obtain possession 1011
Liability of legatee 1012
Obligation of legatee to pay specific legacies 1013

Specific legacies.
Effect of 1014
Interest or income when due 1015
Costs of action for delivery 1016
Heirs responsible for 1017
Accessories to be delivered 1018
When acquisitions added to real estate 1019
When property mortgaged 1020
When property bequeathed belonged to someone else 1021
When of an undefined thing 1022
When not considered as compensation 1023
Liability of legatee 1024

LEGAL REPRESENTATIVES.
Reduction of donation can be applied for by 921
Effect of public instrument upon 1391
When instrument under private signature binding 1320
Confirmation of donation by 1340
Effect of oath 1365
When can accept or renounce community 1453

LEGITIMACY. (See PATERNITY).
When cannot be contested 197

LEGITIMATION.
When can take place 331
In favor of deceased children 332
Rights of legitimated children 333

LESSEE. (See LEASES).

LESSOR. (See LEASES).

LIGHT. (See SERVITUDES).

LIGHTNING.
Responsibility of lessee 1773

LINE. (See SUCCESSIONS).

LINEN. (See CLOTHES).

LOANS. (See ANNUITIES).
Kinds of 1874
For use 1875
When gratuitous 1876
Lender retains ownership 1877
What can be loaned 1878
Effects of commodatum 1879
Obligations of borrower 1880
Liability of borrower 1881
Destruction by accident 1882
When thing appraised 1883
When borrower not responsible 1884
Borrower cannot retain thing 1885
Borrower's expenses in making use of 1886
Joint and several liability of borrowers 1887
When lender can take back 1888

ART.

When thing must be returned 1889
Borrower's expenses for preservation of 1890
Lender responsible for defects 1891

Loans for consumption.
Definition 1892
Ownership of borrower 1893
When cannot take place 1894
Claim resulting from 1895
When of bullion 1896
Return of bullion or provisions 1897
Liability of lender 1898
When lender can claim thing 1899
When no time fixed for restitution 1900
When judge to fix time for payment 1901
Obligation of borrower to return 1902
When borrower to pay value 1903
When borrower owes interest 1904

Loans with interest.
Interest may be stipulated 1905
When interest wrongly paid 1906
Rate of interest 1907
When receipt given for capital 1908

LOANS ON BOTTOMRY.
Are contingent contracts 1964

LOCKS.
Repairs to 1754

LOCKSMITH.
Rules applying to 1799

LOSS. (See LEASES and OBLIGATIONS).
Usufruct expires by 617
Obligations extinguished by 1234
Special conditions in case of 1302
Debtor obliged to assign his rights to creditor 1303
In case of sale 1624
Lessee's responsibility .. .. 1732 et s.
Of cattle 1805
Of cattle, when total 1825
Settler not to bear whole loss 1828

LOST THINGS.
Rules as to things thrown overboard 717
Prescription as to 2279

M

MADNESS. (Seee INTERDICTION).
Effect of 489

MAGAZINE OF SALT.
Distance to be left 674

MAINTENANCE. (See EDUCATION and SUPPORT).
Expense of, not collated 852

MAJORITY.
When it takes place 488

MANAGEMENT OF ANOTHER'S BUSINESS.
Obligations arising from 1372

ART.

MANURE.
When real estate by destination 524
Lessee has benefit of 1811, 1819
When must be used on farm 1824

MARITIME LAWS.
Not affected by present code 2120

MARRIAGE. (See ANNULMENT of MARRIAGES and COMMON REPUTE).
Publications of banns before marriage 63
Publications of banns how made 64
When new publications of banns necessary 65
Notices of opposition 66
Entry of opposition 67
Celebration stopped until opposition removed 68
When publication of banns made in several counties 69
Birth of parties to be proved 70
When certificate of identity necessary 71
Certificates of identity to be presented to the Court 72
Consent of parents how given 73
Where celebrated 74
How celebrated 75
Contents of records of marriage 76
Age to contract marriage 144
Dispensations on account of age 145
Consent necessary 146
No second marriage before dissolution of first 147
Consent required for minors 148
If one of the parents is dead 149
Consent of grandfather or grandmother 150
What is equivalent to records of death 151
Disagreement as to consent 152
When the ascendant is banished 153
Consent required between 21 and 25 years of age 154
Notice to be given if no consent obtained 154
When marriage can take place 155
When officers of civil status subject to penalties 156
Officers fined for not requiring proof of notice.. 157
What consent required for natural children 158
When natural child requires consent of family council 159
When declaration of minor sufficient 160
Prohibitions on account of relationship 161
Prohibitions in collateral line 162
Prohibitions between uncle and niece, etc 163
Prohibitions may be withdrawn 164
How celebrated 165
Where banns to be published 166
Special provisions as to publications of banns 167
Where banns published for minors 168
When publication of banns is dispensed with 169
Validity when contracted in foreign country 170
Recording celebration when contracted abroad 171

Opposition to.
Who can oppose 172
When father or mother may oppose 173
When collaterals may oppose 174
When guardian or curator may oppose 175
Contents of notices of opposition 176
When Court to decide validity of opposition 177
Appea 178
Damages if opposition vacated 179
Public officers fined if formalities overlooked 192
Penalties for violation of requirements 193
Status resulting from record of celebration 194
Record to be produced even when common repute exists .. 195
When proof of results from criminal action 198
By whom criminal action can be brought 199

	Art.
Action against his heirs, if public officer dead	200
Effects notwithstanding it is declared void	201
Effects as to party acting in good faith	202
Obligations resulting from marriage.	
Obligations of parties	203
Child has no claim for his establishment	204
Children owe support	205
Sons-in-law and daughters-in-law owe nourishment	206
Reciprocity of obligation to support	207
Extent of support	208
When obligation to support ceases	209
Obligation to lodge and feed	210
How obligation to support may cease	211
Rights and duties of Husband and Wife.	
Respective duties	212
Individual duties	213
Wife must live with husband	214
Wife cannot sue without consent	215
When husband's consent unnecessary	216
Acts which wife cannot perform	217
Consent to sue may be given by Court	218
How wife can obtain consent	219
Wife may bind herself when public trader	220
Consent when husband sentenced	221
Consent when husband interdicted or absent	222
Validity of general authorization	223
If husband a minor, consent of Court required	224
Who can set up want of consent	225
Wife can make will	226
How dissolved	227
Second marriages	228
Rights of person having children by previous marriage	1098
Reduction when rights of children by previous marriage affected	1527
MARRIAGE CONTRACTS. (See COMMUNITY, CONVERSION CLAUSE and DOTAL SYSTEM).	
Effect of general authorization given by	223
Right to succession cannot be renounced in	791
Mortgage applying to matrimonial agreements	952
By minor	1309
What can be convenanted	1387
Parties cannot derogate from certain rights	1388
Legal order of successions cannot be changed	1389
Old laws and customs no more to govern	1390
What general stipulations can be made	1391
Stipulation as to dowry	1392
When legal community exists	1393
How drawn up	1394
Such agreements cannot be altered after marriage	1395
How changes must be mentioned	1396
Effect of changes with respect to third parties	1397
Capacity of minor	1398
General provisions	1527
MASTERS.	
Responsibility of	1384
MATERIALS. (See ACCESSION).	
When personal property	532
When those of another person used	554
When used for a thing of a new kind	570
Rights of usufructuary to	624
MATERNAL DESCENT.	
When proof allowed	341
When proof not allowed	342

ART.

MATERNAL LINE. (See SUCCESSIONS).
Division of successions 733

MECHANICS. (See EMPLOYEES and WORKMEN).

MEDALS.
Not included in word „ movable " 533

MERGER.
Effect of 1209
Dissolves obligations 1234
When it takes place as a matter of right 1300
When it extends to sureties 1301

MIDWIFE.
When to declare birth 56

MILITARY SERVICE. (See NATIONALITY).

MILK.
Lessee entitled to 1811, 1819
Stipulation as to 1828

MIND. (See SOUND MIND).

MINISTERS OF THE GOSPEL.
When cannot take legacies 909

MINORITY. (See MINORS).

MINORS. (See ACKNOWLEDGMENT, ADOPTION, EMANCIPATION and GUARDIANS).
Domicile of 108
When cannot contract marriage 144
Who are 388
When emancipated by right 476
Power to dipsose of property 903
Wills of 904
Donation to 935
Cannot act as executors 1030
Power to make donation by marriage contracts 1095
Cannot make contracts 1124
When injury causes rescission 1305
When not relieved on account of injury 1306
Effect of declaration of age 1307
When a trader, etc. 1308
Validity of condition of marriage contract 1309
Obligation resulting from tort or quasi tort 1310
When agreement ratified after majority 1311
Effect of cancellation of agreements 1312
Special rule applying to real estate and successions 1314
Validity of agreements in marriage contract 1398
As to leases of their property 1718
Legal mortgages in favor of 2121, 2122
When their property can be mortgaged 2126
No inscription required for such mortgages 2135
Sale of real estate of 2206
When real estate held jointly 2207
Prescription 2276

MIRRORS.
When real estate by destination 525
Included in words „ Furnishing Movables " 534
Usufructuary can remove those placed by him 599

MISAPPROPRIATION.
By public officers 2102

Art.

MISCONDUCT. (See PATERNAL AUTHORITY).
Right of father over child for .. .. 375 et s.
Removal from guardianship for 444
Guardian may have minor incarcerated for 468

MORALS. (GOOD).
Laws relating to 6
Cause is illicit when contrary to 1133
Conditions contrary to, are prohibited 1172
Marriage contracts not to be contrary to 1387

MORTGAGES. (See CANCELLATION, INSCRIPTION, REGISTRARS, SATISFACTION OF MORTGAGES and TRANSCRIPTION).
Definition 2114
When they exist 2115
Kinds of 2116
Definition of various kinds of 2117
What they apply to 2118
Personal property not subject to 2119
Maritime law not affected 2120
Legal 2121
How enforced 2122
Judicial 2123
Conventional 2124
When right is conditional 2125
Property of minors, etc. 2126
How deed executed 2127
Effect of foreign contracts 2128
Contents of deed 2129
Stipulation as to future property 2130
When property becomes insufficient 2131
Amount to be fixed by deed 2132
Extend to improvements 2133
Duties of husbands and guardians 2136
Duties of assistant guardians 2137
Covenants resulting from marriage contract 2140
Covenants as to guardian 2141
How such covenants carried out 2142
Guardian may ask for reduction 2143
Husband may ask for reduction 2144
Judgments ordering reduction 2145
Rights of creditors follow property 2166
Liability of third party in possession 2167
Duties of third party in possession 2168
Rights of mortgagees against third parties 2169
Rights of third party in possession 2170
Plea of seizure 2171
Abandonment on account of. 2172
When such abandonment takes place 2173
How made 2174
Damages occasioned by third party in possession 2175
When revenue due by third party 2176
Servitudes of third party when renewed 2177
Remedy of third party who has paid 2178
How third party can free property 2179
How they expire 2180
How they are removed 2181
A simple transcription does not free property 2182
Declaration to be made by new owner 2183
What such declaration shall contain 2184
Sale at auction 2185
When property freed 2186
Resale at auction 2187
Liability of highest bidder 2188
Transcripion of judgment 2189
Withdrawal of creditor from sale 2190
Remedy of highest bidder 2191
When several pieces of property included in deed 2192

	Art.
MOTHERS. (See Fathers and Mothers).	
Lose right of enjoyment upon re-marriage	386
MOURNING.	
Of the widow, how paid for	1481
MOVABLES.	
What they include	533
MOVABLE EFFECTS.	
What they comprise	535
MYRIAMETERS.	
For promulgation of laws	

N

NAMES. (See Instruments of Notoriety and Records of Birth Death and Marriage).	
To be stated in records of civil status	34
Of foundling	58
Effect of adoption as to	351
NATIONALITY. (See Law on Nationality, page 11).	
Who are French	1
Who may decline French nationality	2
Who may become French	3
Children of aliens	4
Declarations for acquiring or declining French nationality	5
Naturalized aliens	6
Who may obtain naturalization without residence	7
Alien woman who marries Frenchman	8
Loss of French nationality	9
Action for forfeiture	10
Who may recover French nationality	11
When rights to nationality acquired	12
Former articles repealed	13
Temporary provisions	14
How nationality of French women affected	14
Enlisting in military service of a foreign country	14
NATURALIZATION. (See Nationality).	
NATURAL CHILDREN. (See Acknowledgment, Guardians, Law on Nationality, Marriage, Paternal Authority and Successions).	
Provisions relating to records of civil status of	98
Consent required for marriage	158
When consent of family council required	159
When oath deferred	160
Marriage prohibited in the direct line	161
When marriage prohibited in the collateral line	162
Legitimation of	331
Consent in case of adoption	350
Name given in case of adoption	351
Paternal authority	383
Legal enjoyment of father or mother	384
Management of property by guardian and general provisions	389
NEGLIGENCE. (See Torts).	
Responsibility for injuries resulting from	1383
NEIGHBOR. (See Servitudes).	
NEPHEWS AND NIECES.	

ART.

Marriage prohibited with uncle or aunt 163
This prohibition may be withdrawn 164
Failure to denounce unworthy heir 728
How relationship counted 738
How representation admitted 742

NEWLY BORN.
When newly born child found 58

NIECES. (See NEPHEWS).

NOTARIES.
To be appointed to represent absentee 113
Judicial sale before 827
Accounts made up by 828
Donations to be executed before 931
Shall receive will in public form 971
Wills to be deposited with 1007
Subrogation to be drawn up by 1250
When copies are proof 1335
Public instruments to be drawn up by 1341
All matrimonial agreements to be drawn up by 1394
Changes or defeasances in marriage contracts 1397
Instrument for re-establishment of community 1451
When marriage contracts modified. 1597

NOTE.
How written out. 1326

NOTICE. (See DIVORCES and LEASES).
To be served for freeing mortgages 2183
Before sale of real estate 2185

NOTORIETY. (See INSTRUMENT of NOTORIETY).

NOURISHMENT. (See SUPPORT)..

NOVATION.
Separation of property cannot be obtained after 879
Obligations are extinguished by 1234
How takes place 1271
Between what persons 1272
Cannot be presumed 1273
By substitution 1274
When assignment does not produce 1275
Effect of release of debtor 1276
An indication not sufficient 1277
Of preferences and mortgages 1278
Of preferences and mortgages by substitution 1279
In case of joint debtors 1280
When co-debtors released 1281

NULLITY. (See CONTRACTS and MARRIAGE CONTRACTS).
Who can set up nullity of marriage 225
Of agreements between guardian and minor 472
Of acts of interdicted person 502
Of separation of property 1444
Of sales 1658

NURSERY.
Rights of usufructuary to trees of 590

O

OATHS.
Kinds of 1357

ART.

Decisive oaths.
When deferred 1358
For what deferred 1359
At what times deferred 1360
When person refuses to take it 1361
Cannot be deferred back 1362
When falsity of, cannot be proved 1363
When cannot be withdrawn 1364
Effect of 1365

Oaths administered by the Court.
Judges may administer 1366
When Judges may administer 1367
Cannot be deferred back 1368
When Judges may administer as to value 1369

OBEDIENCE.
Wife owes 213

OBJECT. (See CONTRACTS).

OBLIGATIONS. (See ASSIGNMENT, CAUSE COMPENSATION, CONDITION, CONSENT, CONTRACTS, DAMAGES, INSTRUMENTS, INTEREST, INTERPRETATION, JOINT and SEVERAL LIABILITY, LOSS, MERGER, NOVATION, OATHS, PAYMENT, PENALTY, PRESUMPTION, PREFERENCES, PUBLIC INSTRUMENTS, REMISSION OF DEBT, TENDERS and TIME).
Effect of 1134
Effect extends to consequences 1135
Delivery of thing 1136
Care to be taken 1137
When delivery complete 1138
How demand made 1139
How delivery of real estate is governed 1140
As to delivery to two persons successively 1141
Effect of obligation to do or not to do 1142
Creditor can demand destruction of thing done 1143
Creditor may have to carry out 1144
Damages for violation 1145
Damages for non-fulfilment of.. .. .. 1146 et s.

Of Conditional Obligations.
What are 1168
Fortuitous condition 1169
Potestative condition 1170
Mixed condition 1171
Condition contrary to good morals 1172
Condition not to do an impossible thing 1173
Effect of potestative condition 1174
How condition fulfilled 1175
Condition of event happening 1176
Condition of event not happening 1177
When condition supposed to be fulfilled 1178
Retroactive effect of condition 1179
Steps for preservation of creditors rights 1180

Suspensive Condition.
Nature of 1181
Effect of 1182

Resolutive condition.
Nature of 1183
When implied 1184

Obligations depending upon time.
Time differs from a condition 1185
Effect of 1186

	Art.
Presumption of	1187
When time can no longer be claimed	1188
Alternative obligations.	
When debtor released	1189
To whom choice belongs	1190
How debtor exonerated	1191
When obligation single	1192
When obligation becomes single	1193
When choice left to creditor	1194
When both things destroyed	1195
Same principles when more than two things included	1196
Joint and several obligations. (See JOINT and SEVERAL LIABILITY).	
Divisible and Indivisible Obligations.	
What they are	1217
When indivisible	1218
When indivisibility does not exist	1219
How divisibility carried out	1220
When divisibility does not take place	1221
Liability of contracting parties	1222
Liability of heirs of contracting parties	1223
Rights of heirs of creditor	1224
Rights of heirs of debtor	1225
Obligations with penalties.	
What a penalty is	1226
When penalty avoided	1227
Rights of creditor	1228
Penalty is a compensation	1229
When penalty due	1230
Penalty can be modified by Judge	1231
Penalty applying to an indivisible thing	1232
How penalty incurred if obligation divisible	1233
Dissolution of obligations.	
How takes place	1234
When loss or destruction dissolves	1302
Effect of loss or destruction upon debtor	1303
Action for rescission of contracts (See MINORS).	
How long maintainable	1304
Proof of obligations.	
Proof must be made	1315
Rules relating to evidence	1316
Obligations to return (See DONATIONS).	
When such provisions valid	1048 et s.
OBSCURITY OF THE LAW.	
No excuse for refusing judgment	4
OFFICERS. (See RECORDS OF CIVIL STATUS and DOCTORS).	
OFFSET. (See COMPENSATION).	
OLD AGE.	
Destruction of building in case of usufruct	624
Destruction of leased property	1730
Repairs resulting from	1755
OPENINGS. (See SERVITUDES).	
In a party wall	675
Right of owner to make	676
How made	677

ART.

Distance to be kept 679
How distance counted 680

OPPOSITION. (See MARRIAGE).

ORAL EVIDENCE. (See PROOF).

ORDER. (See PUBLIC ORDER).

OUTLET. (See RIGHT OF WAY).

OWNER. (See USUFRUCT).
Privilege of 2102

OWNERSHIP. (See ACCESSION and PROPERTY).
Rights derived from 537
Definition 544
Cannot be taken away without compensation 545
Revenue of 546
How acquired 711
Other ways of acquiring 712
Things without owner 713
Common enjoyment 714
How right to hunt and fish regulated. 715
Of treasure trove 716
Of flotsam and jetsam 717
Of lost property 717

P

PANES OF GLASS.
Repao irs t.. 1754

PAPER-MILLS.
When real estate by destination 524

PAPERS.
When incipiency of written proof 324
Effect of as proof 1331
Can be used by wife as proof 1415

PARAPHERNAL PROPERTY.
What is 1574
How wife contributes to expenses 1575
Wife has management of 1576
When husband must account for 1577
When husband accountable for revenue of 1578
When husband answerable for revenue 1579
Obligations of husband 1580

PART. (See PORTION).

PARTITION. (See DIVISION).

PARTNERSHIPS.
Definition 1832
Necessary conditions 1833
When to be made in writing 1834
Different kinds of 1835

General Partnerships.
How divided 1836
Of present property 1837
Of profits 1838
Effect of simple agreement 1839
Between what persons it can exist 1840

ART.

Specific Partnerships.
Definition 1841, 1842

Agreements of partners between themselves.
Commencement of 1843
When no agreement as to duration 1844
Contributions of partners 1845
Interest due on contribution not paid 1846
When work to be contributed 1847
Apportionment of payments received 1848
Insolvency of debtor who has paid a partner 1849
Liability of partners 1850
Risk of thing of which enjoyment is given 1851
Cause of action of partner against 1852
When share of profits and losses not fixed 1853
When third party is to fix share of profits 1854
One partner cannot receive all the profits 1855
Management by partner 1856
When several partners have management 1857
When one manager cannot act without the other 1858
Rules of management in default of stipulation 1859
Rights of partner not a manager 1860
Right to take in third party 1861

Agreement of partners with respect to third parties.
When partners are not jointly liable 1862
Liability to creditors 1863
How partners bound 1864

How partnerships come to an end.
How they come to an end 1865
Extension of partnership, how proved 1866
When loss of thing produces dissolution 1867
Effect of death of partner 1868
Dissolution by wish 1869
When renunciation not in good faith 1870
When dissolution can be asked for 1871
Rules applying to divisions 1872
Provisions applying to commercial 1873

PARTY WALLS. (See ENCLOSING PROPERTY and SERVITUDES).
Which are 653
Indication 654
Repairs 655
Exemption from repairing 656
Rights of joint owner 657
Joint owner may raise 658
When to be reconstructed 659
How neighbor can acquire joint rights 660
Rights of neighbor 661
When consent of neighbor necessary 662
Obligations of neighbor 663
Servitudes in case of reconstruction 665

PASTURAGE. (See PASTURE).

PASTURE.
Is a discontinuous servitude 688

PATERNAL AUTHORITY.
In case of adoption 352
Duties of child 371
Until when child remains under 372
When father exercises 373
Child cannot leave father's house 374
How father can correct child... 375
Father can have child incarcerated 376

ART.

Duration of incarceration 377
How incarceration ordered 378
Father can reduce incarceration 379
Incarceration of child of previous marriage 380
Incarceration if mother has remarried 381
Incarceration if child has property 382
What rules apply to parents of natural children 383
Enjoyment by father and mother of child's property 384
Obligations of such enjoyment 385
When right of enjoyment lost 386
Over what property enjoyment extends 387
Over property of natural child 389

PATERNAL DESCENT. (See REPUDIATION).
When it can be established 340
When it cannot be established 342

PATERNITY. (See ACKNOWLEDGMENT, FILIATION, PATERNAL DESCENT and REPUDIATION).

PAWNS.
Rights of creditors 2073
When such privilege exists 2074
Such privilege only applies to incorporeal things 2075
Where thing to be placed 2076
May be given by third party 2077
Creditor cannot dispose of 2078
Debtor remains owner 2079
Liability of creditor 2080
Interest on 2081
When debtor can claim return of 2082
Cannot be divided 2083
When provisions do not apply 2084

PAWN ESTABLISHMENTS.
Regulations applying to them 2084

PAYMENT. (See IMPUTATION, SUBROGATION, SUCCESSION and TENDERS).
How co-heirs contribute to 870
How legatee under universal title contributes 871
When donation void, if made on condition of 945
Supposes a debt 1235
Who can make 1236
Right of creditor as to fulfilment of obligation 1237
Validity 1238
To whom must be made 1239
When made in good faith 1240
When void 1241
When made notwithstanding attachment 1242
Thing due must be given 1243
Debtor cannot pay partially 1244
When debtor released 1245
When thing only specified as to its kind 1246
Where to be made 1247
Expenses connected with 1248
Proof of must be made 1315

PENALTY (See COMPENSATION, OBLIGATIONS).
Definition 1226

PER CAPITA. (See CAPITA).

PER STIRPES. (See STIRPES).

PERSONAL PROPERTY.
Of minor to be sold 452
Father and mother may retain 453

ART.

How defined 527
By nature 528
By regulation of law 529
Things which are 531
Materials 532
Movables 533
Furnishing movables 534
What it comprises 535
What sale or donation of house includes 536

PHYSICIANS. (See DOCTORS).

PIGEONS.
When real estate by destination 524
Ownership of 564

PIPES.
Are real estate 523

PLANTATIONS. (See CONSTRUCTIONS).
Right of owner to make 552
By whom supposed to have been made 553
When owner must pay for 554
When made with another's materials 555

PLASTERING
When to be done by tenant 1754

PLEA OF SEIZURE. (See SEIZURE).

PLEDGE. (See ANTICHRESIS and PAWNS).
Definition 2071
Of personal property called "Pawn" 2072
Of real estate called "Antichresis" 2072

PLOUGHING.
Expense of 548
In case of usufruct 585

POLES.
When usufructuary can take 593

POLICE. (See LAWS).

POLITICAL RIGHTS. (See NATIONALITY).
Governed by special laws 7

PONDS.
Alluvion does not take place 558
Fish of 564

POOR.
Donations in favor of, must be authorized 910
Donations how accepted 937

PORTION OF PROPERTY WHICH CAN BE DISPOSED OF.
How fixed 913
Applies to all descendants 914
Amount of property reserved 915
When no neserve 916
When usufruct or annuity exceeds 917
How calculated 918
Declaration of preciput 919

PORTS.
Belong to the Public Domain 538
Delivery to carrier in 1783

	Art.
POSSESSION. (See Absence, Prescription and Succession).	
When possessor acquires fruits	549
When possessor in good faith	550
When universal legatee must apply for	1008
When thing to be delivered to two persons	1141
Definition of	2228
Necessary for prescription	2229
Presumption as to	2230
How possessor presumed to hold	2231
Acts not giving rise to	2232
Effect of acts of duress	2233
Presumption of continuance of	2234
Of predecessor may be added	2235
POSSESSOR. (See Possession).	
POWER OF ATTORNEY.	
Definition	1984
How given	1985
When without compensation	1986
Kinds of	1987
When made in general terms	1988
Attorney can do nothing beyond	1989
Women and emancipated minors can act	1990
Obligation of attorney to act	1991
Liability of attorney	1992
Must render an account	1993
Liability of attorney in case of substitution	1994
When no solidarity between attorneys	1995
When attorney owes interest	1996
When no guarantee due	1997
Obligation of principal.	1998
Principal must repay advances	1999
He must make losses good	2000
When interest due on advances	2001
When attorney appointed by several persons	2002
Expiration of	2003
Revocation of	2004
Effect of revocation as to third parties	2005
Appointment of new attorney equivalent to revocation	2006
Attorney may renounce	2007
When attorney has not heard of death of principal	2008
Effect of engagements in such case	2009
Heirs of attorney to give notice of his death	2010
PRECIPUT.	
When donations or legacies made with	843, 844
Effect of	919
When division may be attacked	1079
May be stipulated in marriage contract	1497
Right of surviving wife	1515
Nature of	1516
When takes effect	1517
When delivery made	1518
Rights of creditors	1519
PREFECTS.	
Exempt from guardianship	427
PREFERENCES. (See Inscriptions of Mortgages and Pawns).	
Among creditors	2073
Effect of obligation	2092
Debtor's property is common pledge	2093
Cause of	2094
Definition	2095
How established	2096
Rights of creditors of same rank	2097

	Art.
In favor of treasury	2098
To what they apply	2099
Nature of	2100
General	2101
Special	2102
Relating to real estate	2103
Relating to all kinds of property	2104
When enforced against real estate	2105
How maintained	2106 et s.

PREGNANCY.

When child cannot be disowned	314

PRESCRIPTION. (See POSSESSION).

Definition	2219
When can be renounced	2220
How renunciation made	2221
Persons who cannot renounce	2222
Judges cannot set up plea of	2223
When can be set up	2224
Creditors can set up	2225
When does not operate	2226
Runs against the State, etc.	2227
When does not run	2236
Same rule extends to heirs	2237
Runs when title modified	2238
As to conveyances by lessees or depositories	2239
How person cannot acquire against his own title	2240
How person can acquire against his own title	2241
Can be interrupted	2242
When natural interruption takes place	2243
What constitutes civil interruption	2244
Effect of citation	2245
When citation improperly issued	2246
Irregularities preventing interruption	2247
Effect of admission	2248
When there are several persons jointly liable	2249
Interruption against surety	2250
Against whom it runs	2251
When minors and interdicted persons exempt	2252
None between husband and wife	2253
Against married woman	2254
When it does not run during marriage	2255
When suspended during marriage	2256
When it does not run	2257
When it does not run in other cases	2258
During time for inventory and deliberation	2259
How counted	2260
When takes effect	2261
Of thirty years	2262
In case of annuity	2263
Other rules	2264
Of ten or twenty years	2265
Effect of domicile	2266
When title irregular	2267
Good faith presumed	2268
What is sufficient good faith	2269
Guarantee of architects, etc.	2270
Of six months	2271
Of one and two years	2272
Of two and five years	2273
When ceases to run in such cases	2274
When oath can be deferred	2275
When Judges and solicitors released as to papers	2276
Arrears and interest	2277
Against minors and interdicted persons	2278
When possession equivalent to title	2279

	Art.
When thing stolen or lost has been bought	2280
Rule as to ancient claims	2281
PRESUMPTIONS. (See Absence and Filiation).	
Of survivorship	720, 721, 722
Fraud cannot be presumed	1116
Definition	1349
Legal	1350
Weight of judgment	1351
Effect of legal	1352
Effect of when not established by law	1353
PRICE. (See Inadequacy).	
Insufficiency of	1658
PRIVATE SIGNATURE. (See Instruments and Remission of Debt).	
PROFIT. (See Contracts. Damages and Partnership).	
PROJECTIONS.	
Distance to be lept	678
How distance counted	680
PROMISSORY NOTE. (See Sale).	
How written out	1326, 1327
PROMULGATION.	
Of laws	1
PROOFS. (See Copies of Instruments, Inadequacy, Instruments, Oaths, Presumptions, Public Instruments, and Tallies).	
What constitutes incipiency of proof	324
When must be made	1315
Rules relating to	1316
Books of merchants can serve as	1329, 1330
When diaries and private papers can serve as	1331
How annotations can serve	1332
Effect of transcription of deed.	1336
Oral evidence	1341
When interest and capital exceed 500 francs	1342
Use of oral evidence when claim reduced	1343
When oral evidence allowed	1344
When action for several amounts exceeding 500 francs	1345
How actions on oral evidence only brought	1346
Exception in case of incipiency of written proof	1347
Other exceptions	1348
As to partnership	1834
As to obligatory deposits	1923
PROPERTY. (See Ownership, Personal Property, Public Domain and Real Estate).	
Nature of property	516
Free disposal of	537
Public Domain	538
Vacant property	539
Different kinds of	543
Definition	544
Right to retain	545
Various kinds of	546
PROVISIONS.	
Not included in word movable	533
PUBLIC DOMAIN.	
Property forming part of	538
Other property belonging to	540, 541

ART.

PUBLIC INSTRUMENTS. (See INSTRUMENTS).
Definition .. 1317
When have same effect as private instruments .. 1318
Constitute absolute proof .. 1319
Constitute proof between the parties .. 1320
Effect of defeasance .. 1321

PUBLIC ORDER.
Laws must be followed .. 6
Cause of obligation illicit, when against .. 1133

PUBLIC SALE.
Of minors property .. 459
When ordered by judgment .. 460
Of decedent's property .. 822
When real estate cannot be divided .. 827
When necessary .. 838
How made .. 839
Effect of purchase made during marriage at .. 1408
Of community property .. 1476
When joint property cannot be divided .. 1686
When public must be given notice .. 1687
Formalities to be complied with .. 1688
PUBLIC USE. (See USE).

Q

QUARRIES.
Rights of usufructuary .. 598
Rights of community to products of .. 1403

QUASI CONTRACTS.
How formed .. 1370
What they are .. 1371
When person manages another's business .. 1372
Management must be continued .. 1373
Care to be bestowed .. 1374
Owner's obligation .. 1375
When thing received by mistake .. 1376
When debt paid by mistake .. 1377
When person has received payment in bad faith .. 1378
When real estate unduly received .. 1379
Obligation to return price of thing sold .. 1380
Expenses to be refunded .. 1381

QUASI TORTS. (See TORTS).

R

RABBITS.
When real estate by destination .. 524
Ownership when they go to another warren .. 564

RANK.
Of creditors, how regulated. 2218

RATIFICATION.
Validity of payment if ratified .. 1239
After minor has come of age .. 1311
Instrument ratifying obligation .. 1338

REAL ESTATE. (See COMMUNITY and DOTAL SYSTEM).
By what law governed .. 3
When property is .. 517
By nature .. 518, 519
Crops and fruit .. 520
Timber and trees .. 521

	Art.
Animals	522
Pipes	523
Things used for cultivation	524
Things fastened or which cannot be removed	525
When usufruct and servitudes are	526

REAL ESTATE BY DESTINATION. (See REAL ESTATE).

RECEIPT. (See IMPUTATION of PAYMENT, JOINT and SEVERAL LIABILITY).

Effect of what is added to	1332
Effect of receipt for capital	1908

RECONCILIATION.

Effect of, in action for divorce	272

RECONSTRUCTION. (See PARTY-WALL).

Liability of owner or usufructuary	607
Of party wall	655

RECORDS OF CIVIL STATUS. (See INSTRUMENTS OF NOTORIETY).

What they must state	34
Only to contain certain statements	35
Parties may be represented	36
Who may act as witness	37
To be read to parties	38
How signed	39
How recorded	40
Registers to be numbered and initialed	41
No blanks, abbreviations or corrections to be approved	42
Registers when closed to be deposited	43
Papers to be deposited	44
Any one can obtain extracts; faith due to them	45
How proof made if there are no registers	46
Faith due to foreign records	47
Validity of foreign records relating to French people	48
How mentioned in margin of other records	49
Penalties applying to public officers	50
Responsibility of custodians of records	51
Damages for alterations, forgeries, etc.	52
Registers to be examined	53
Right of parties to attack judgments relating to	54
Records of birth (see birth)	55
Records of acknowledgment of natural child	62
Records of marriage (see marriage)	63
Records of death (see death)	77
Records relating to soldiers, sailors, etc.	93
Certified copies of such records to be made	94
Registers to be kept	95
Registers to be numbered and initialed	96
Publications of banns, how made in special cases	97
Provisions applying to natural children	98
Proceedings for rectifying	99
Effect of judgment ordering rectification	100
How such judgments recorded	101

RECOVERY

Actions for, of real estate	526

REDEMPTION. (See RIGHT of REDEMPTION).

Of annuity	530
Liability of husband or wife for certain redemptions	1437
Of perpetual annuity	1911
Debtor of annuity may be compelled to	1912

	Art.
REDEMPTION. (Right of)	
Definition	1659
Limit of time	1660
Time cannot be extended by Court	1661
When purchaser becomes irrevocable owner	1662
Time runs against all persons	1663
Action against second purchaser	1664
Rights of purchaser	1665
Plea of seizure	1666
If sale is of an undivided part	1667
In case of joint sale	1668
Same rule if vendor had several heirs	1669
Parties to be joined	1670
When estate belonged to several owners	1671
Action against purchaser's heirs	1672
Expenses to be reimbursed by vendor	1673
As to tenant	1751
REDUCTION. (See Donations and Mortgages).	
Of obligations of emancipated minor	484
Of donations	920
Action for	1496
REGISTERS. (See Records of Civil Status and Registrars).	
REGISTRARS OF MORTGAGES.	
Are bound to deliver copies	2196
Responsibility for omissions	2197
Effect of omissions in certificates	2198
Must make transcriptions, etc	2199
Must keep special register	2200
Registers to be stamped	2201
Penalty for violation	2202
How entries made	2203
RELATIONSHIP. (See Successions).	
RELATIVES. (See Cousins, Family Council, Interdiction and Successions).	
RELEASE. (See Presumption and Remission of Debt).	
Of indivisible obligations	1224
Necessity of proving	1315
Effect of writing on the back of an instrument	1332
Of interest	1908
When sequestration may be ordered	1961
REMISSION OF DEBT.	
Effect of surrender of original	1282
Effect of surrender of exemplified copy	1283
Surrender to joint debtor	1284
Release of joint debtors	1285
Effect of return of pledge	1286
When sureties released	1287
Payment by surety	1288
RENEWAL. (Tacit).	
At expiration of lease	1738
Effect of notice to quit	1739
Security not extended	1740
RENTS.	
When civil fruits	584
When they bear interest	1155
When preferred claims	2102
When outlawed	2277

	Art.
RENUNCIATION. (See COMMUNITY and SUCCESSIONS).	
Of community of absentee	126
By usufructuary	621
Rights of creditors of usufructuary	622
By attorney in fact	2007
In compromises	2048
Preferences expire by	2180
Of prescription	2220
REPAIRS.	
Right of usufructuary as to	592
Liability of usufructuary	605
Important	606
When community liable for	1409
Incumbent upon tenant	1754
REPAYMENTS BY HUSBAND OR WIFE. (See COMMUNITY).	
REPRESENTATION.	
When children of unworthy person not excluded	730
Takes place after division between two lines	734
Definition	739
In descending line	740
None in favor of ascendants	741
In collateral line	742
How takes place in divisions	743
None of living persons	744
REPRESENTATIVES. (See LEGAL REPRESENTATIVES).	
REPUDIATION. (See COMMON REPUTE, FILIATION and PATERNITY).	
When husband may disown wife's child	312
When he cannot disown	313
Special cases	314
When child born after dissolution of marriage	315
When objections to be set up	316
When husband dies before setting up objections	317
Suit must follow repudiation	318
Of signature	1324
REPURCHASE. (See REDEMPTION, RIGHT OF)	
RES ADJUDICATA.	
Legal presumption	1350
Its weight	1351
RESALE.	
When vendor can prevent	2102
Of real estate at auction	2187
RESCISSION. (See CANCELLATION, INTERDICTED PERSONS, MINORS and SALE).	
Of divisions	887
Action for	888
When action does not lie	889
Appraisal for inadequacy	890
How defendant can stop action	891
When co-heir can no longer maintain action	892
When inadequacy a cause of	1313
Of sale	1658
When inadequacy sufficient for	1674
How inadequacy ascertained	1675
Time to bring action	1676
How proof of inadequacy made	1677
Report of experts required	1678
When opinions of experts differ	1679

ART.

Experts to be appointed by Court 1680
Rights of purchaser after judgment 1681
Consequences of his selection 1682
Purchaser not entitled to, for inadequacy 1683
Not allowed in case of judicial sale 1684
How action brought 1685
When not allowed in case of inadequacy 1706

RESOLUTIVE CONDITION. (See OBLIGATIONS).
Definition and effect 1183
When implied 1184

RESPONSIBILITY. (See TORTS).
For injury caused 1383
Extent of 1384

RESTITUTION. (See DONATION and WILLS).
Action for 930
When property given subject to 1048
When provision valid 1049
In whose favor can take place 1050
Death of heir 1051
When two gifts cannot be divided 1052
Rights of beneficiaries 1053
Rights of wives 1054
Guardian may be appointed to carry out provisions 1055
When guardian to be appointed 1056
When beneficiary loses his rights 1057
Inventory to be made 1058
At whose request inventory made 1059
When guardian to have inventory made 1060
When other persons to have inventory made 1061
Furniture to be sold 1062
Articles not be sold 1063
Animals and implements not to be sold 1064
Proceeds to be invested 1065
Investment of other assets 1066
How investment made 1067
Guardian to watch investment 1068
Publicity in case of 1069
Effect of omission to record deed 1070
Such omission cannot be made good 1071
By whom omission cannot be set up 1072
Responsibility of guardian 1073
When beneficiary is a minor 1074
Action for, in case of deposit 1926

RETROACTIVE EFFECT.
Of laws 2
Of condition of obligation 1179

RETURN. (See DONATIONS).
Of articles given may be stipulated in donations.. .. .. 951 et s.

REVENUE. (See FRUITS, INTEREST and USUFRUCT).
Of things subject to collation 856
When bears interest 1155
When due in case of bad faith 1378
Assets of community 1401
In case of separation of property 1539
Right of husband to 1549
When dowry comprises usufruct 1568
Of dowry upon dissolution of marriage .. .. 1570 et s.
When husband acts as attorney-in-fact 1577

REVERENTIAL FEAR.
Effect of 1114

ART.

REVERSION. (See RESTITUTION).

REVOCATION. (See DONATIONS, RESOLUTIVE CONDITION and WILLS).
Of power to manage partnership 1856
Of power of attorney 2003

RIGHT OF WAY.
Owner entitled to outlet 682
Where outlet made 683
When estate divided 684
Continuous use 685

RIGHTS. (See CIVIC and CIVIL RIGHTS and INHERITANCE).

RISKS.
When delivery complete 1138
In case of suspensive condition 1182
After actual tender 1257
In case of sale of goods by weight, etc. 1585
In case of ejectment 1629
In case of partnership 1851

RIVERS. (See ALLUVION and ISLANDS).
Ownership of 538
When part of field carried away 559
When new arm opened 562
When new bed opened. 563
Paths along 650

ROADS.
Belong to Public Domain 538

ROOFS.
Repairs to 664

ROOTS. (See CROPS).
Right to cut 673

RURAL POLICE.
Laws of. 652

RURAL SERVITUDES. (See SERVITUDES).

S

SAILORS. (See RECORDS of CIVIL STATUS).

SALE. (See ASSIGNMENT of CLAIMS, BANKRUPTCY, DELIVERY, PUBLIC SALES, REDEMPTION and WARRANTY).
Definition 1582
When complete 1583
Different kinds of 1584
When goods sold by weight 1585
When goods sold in bulk 1586
When goods to be tasted 1587
When made upon trial 1588
Effect of promise of sale 1589
When earnest money paid 1590
Price must be fixed 1591
Price can be left to arbitration 1592
Expenses of 1593
Who can buy or sell 1594
Between husband and wife 1595
Who cannot be purchasers at public sale 1596

	Art.
Persons who cannot buy contested rights, etc.	1597
What can be sold	1598
Of thing of another person	1599
Of a succession	1600
Of thing totally destroyed	1601
How obscure contract interpreted	1602
Obligations of vendor	1603
When dimensions not correct	1617, 1618
When price can be changed	1619
If thing exceeds measure	1620
When purchaser can cancel	1621
Action for increase or reduction	1622
Of two pieces of property	1623
How loss ascertained	1624
When and where purchaser must pay	1650
When time and place of payment not fixed	1651
When interest due	1652
When purchaser may suspend payment	1653
Effect of non payment	1654
Of real estate when cancelled	1655
When concellation stipulated	1656
When cancellation takes effect	1657
Rescission of	1658

SALT. (See MAGAZINE of SALT).

SATISFACTION OF MORTGAGES. (See MORTGAGES).

Effect of transcription	2181
When transcription insufficient	2182
Notice to be given	2183
How takes place if no inscription	2193
Proceedings for	2194
When no inscriptions taken	2195

SCHOOLMASTERS.

Their responsibility	1384
When action of, outlawed	2271, 2272

SEA VOYAGES. (See VOYAGES).

SEALS.

Guardian must apply for removal of	451
When surviving husband or wife etc. to have them affixed	769
Expenses for, how paid	810
When not necessary	819
Creditors may have them affixed	820
When creditors may oppose removal	821
Testamentary executors to have them affixed	1031
Expenses to be paid by estate	1034
Expenses of, when paid by community	1482

SEASONS. (See BREAKS).

SECOND MARRIAGES. (See MARRIAGES).

SECTIONS OF WOOD. (See WOOD).

SECURITY. (See SURETY).

Aliens must give	16
To be given by presumptive heirs of absentee	120
When will of absentee is carried out	123
When due by husband or wife of absentee	124
When to be given by usufructuary	601
When usufructuary cannot furnish	602
Rights of owner if not furnished	603
Effect of delay in furnishing	604
For use and habitation	626

	Art.
When to be furnished by surviving husband or wife	771
By beneficiary heir	807
To what a surety is bound	2011
For what can be given	2012
Cannot exceed what is due	2013
How can be given	2014
Cannot be presumed	2015
It extends to accessories	2016
When it expires	2034
Conditions to be fulfilled	2040
Pledge may be given instead	2041
As to judicial surety	2042
When given for a judicial surety	2043
SEEDS.	
When real estate by destination	524
When to be paid for by owner	548
In case of usufruct	585
SEIZIN.	
Of heirs	724
Which heirs seized by right	1004
Of universal legatee	1006
Of executors	1026
Heir can put an end to	1027
SEIZURE.	
When purchaser can set up plea of	1666
Rights of surety	2021
When third party in possession may apply for	2170
Minor's real estate cannot be sold before	2206
Of personal property, when unnecessary	2207
SEPARATION FROM BED AND BOARD. (See COMMUNITY).	
When can be sued for	306
How suit conducted	307
Article 247 applies	308
Date of order	309
When can be changed into divorce	310
Effects of judgment	311
Dissolves community	1441
Rights of wife upon	1449
As to preciput in case of	1518
SEPARATION OF DEBTS.	
Effect of	1510
Contributions by husband or wife	1511
Effect as to interest	1512
When indemnity due to husband or wife	1513
SEPARATION OF PROPERTY. (See COMMUNITY and SEPARATION FROM BED AND BOARD).	
Results from separation from bed and board	311
Of decedent may be asked for	878
Dissolves community	1441
When wife can sue for	1443
When void	1444
Must be made public	1445
When wife's creditors can apply for	1446
Husband's creditors may attack	1447
Wife must contribute to household expenses	1448
Rights of wife after	1449
Wife manages her property	1536
Contribution to household expenses	1537
Wife cannot convey her real estate	1538
When husband given enjoyment	1539

ART.

SEPTUAGENARIANS.
May be released from guardianship .. 433

SEQUESTRATION.
Of real estate in case of usufruct .. 602
Kinds of .. 1955
What is conventional .. 1956
Need not be gratuitous .. 1957
How governed when gratuitous .. 1958
To what it applies .. 1959
Effect of .. 1960
May be ordered .. 1961
Effect of appointment of custodian .. 1962
When sequestrator should be appointed .. 1963

SERVANTS.
Domicile of .. 109
Legacy to .. 1023
Masters responsible for injuries caused by .. 1384
Right of widow to food of .. 1465
Special rules .. 1780
Preferred claims of .. 2101
Action belonging to, when outlawed .. 2272

SERVICE. (See MILITARY SERVICE).

SERVITUDES. (See DITCHES, ENCLOSING PROPERTY, HEDGES, PARTY WALLS, RIGHT OF WAY, TREES, WATER).
Definition .. 637
Effect of .. 638
What they result from .. 639

Servitudes resulting from location:
What due by lower tenements .. 640
As to flow of water .. 641
Use of spring .. 642
When course of spring cannot be changed .. 643
Use of water of stream .. 644
How Courts to decide such cases .. 645
Boundaries to be marked .. 646
Enclosing property .. 647
Effect of enclosing .. 648

Servitudes established by law.
Definition .. 649
For public use .. 650
Obligations of owners .. 651
How such obligations regulated .. 652
Contribution to construction of party wall .. 663
Repairs and reconstructions .. 664
In case of reconstruction of party wall or house .. 665
Distances to be kept .. 674
Windows or openings in walls .. 675
How openings or windows can be made .. 676
Height at which openings can be made .. 677
As to false windows balconies and projections .. 678
Side view .. 679
How distance counted .. 680

Servitudes established by man:
How established .. 686
For what use established .. 687
Are continuous or discontinuous .. 688
Apparent or non-apparent .. 689
Continuous and apparent, how acquired .. 690
Must be established by deed .. 691
Effect of destination .. 692
When destination exists .. 693

ART.

When owner of two estates sells one 694
What deeds necessary 695
What follows establishment of 696
Rights of owner of higher tenement 697
By whom works paid 698
Owner may abandon tenement 699
When tenement divided 700
Duties of owner of servient tenement 701
Use of 702
How they expire 703
When they revive 704
They expire when tenements united 705
When not used 706
When prescription begins to run 707
Mode of enjoyment can be outlawed 708
Enjoyment by one owner stops prescription 709
Prescription as to joint owners 710

SETTLEMENT OF DOWRY. (See DOTAL SYSTEM).

SETTLERS PAYING IN KIND. (See LEASES).
Provisions as to .. .. 1827 et seq.

SEVERALLY. (See JOINT and SEVERAL LIABILITY).

SEX.
To be given in record of birth 57
If newly born child found 58
When several persons die simultaneously 720
Presumption of survivorship 721, 722
Children inherit without distinction of 745
Taken into account in case of violence 1112

SEXAGENARIAN.
Can refuse guardianship. 433

SHARES. (See DIVISION OF SUCCESSIONS, SUCCESSIONS and WILLS).

SHEAR.
Right of lessee to 1814

SHIPS.
Are personal property 531

SISTERS. (See BROTHERS).

SKINS.
Lessee bound to account for 1809

SOLICITORS.
When cannot purchase their clients' rights 1597
Actions belonging to, when outlawed 2273
When released from claims as to papers 2276

SONS IN LAW.
Owe support 206
Are entitled to support 207

SOUND MIND.
Is necessary to make donations or wills 901

SOWING. (See SEEDS).

SPECIAL ADMINISTRATOR.
When to be appointed 389

ART.

SPECIAL COUNSEL.
When appointed 391
How appointed 392

SPECIAL GUARDIAN.
In case of repudiation 318
When to be appointed to minors 838

SPECIAL THING.
When debtor released 1245
Effect of destruction of 1302
Sale of 1619

SPENDTHRIFT. (See JUDICIAL ADVISER).
Can be prohibited from performing certain acts 513

SPRING. (See SERVITUDES).

STABLE.
Distance to be left in constructing 674

STAIRCASE.
Repairs and reconstruction 664

STATE. (See PUBLIC DOMAIN).
Islands, etc.. belong to 560
When successions escheat to 768
Legal mortgages of 2121

STATUES.
When real estate 525

STATUS. (See COMMON REPUTE, LAWS and RECORDS OF CIVIL STATUS).
Jurisdiction of Civil Courts 326

STATUTES.
Former Statutes can no longer be invoked 1390

STELLIONATE.
What if results from 2136

STILLS.
When real estate by destination 524

STIRPES, Per
When division takes place 743
How children inherit 745
Rules as to divisions 836

STOLEN THINGS.
Loss of 1302
Period within which owner can claim 2279

STOPPAGE. (See RECORDS OF CIVIL STATUS).

STRAW.
When real estate by destination 524
Outgoing farmer must leave 1778

STREAMS. (See ALLUVION, ISLANDS. RIVERS and SERVITUDES).
Use of waters of 644

STREETS.
Ownership of 538

ART.

SUBLETTING.
In case of use .. 631
In case of habitation .. 634
Right of lessee .. 1717
Deteriorations occasioned by sub-tenants .. 1735
Liability of sub-tenant .. 1753
Right of farmer .. 1763

SUBROGATION.
Either conventional or legal .. 1249
When conventional .. 1250
When takes place as a matter of right .. 1251
Effect as to sureties .. 1252
When surety released .. 2037

SUBTERRANEAN WORK.
Ownership of .. 553

SUCCESSIONS. (See ACCEPTANCE, BENEFIT of INVENTORY, INVENTORY PAYMENT, REPRESENTATION and SEALS).
How they become open .. 718
When several persons die at the same time .. 720
Presumption of survivorship .. 721
Other rules as to survivorship .. 722
Order of .. 723
Vesting of property .. 724
Persons incapable of inheriting .. 725
Unworthy persons .. 727
Failure to denounce murder .. 728
When heir excluded .. 729
Rights of children of unworthy person .. 730
Who take .. 731
Nature of property not considered .. 732
Division between both lines .. 733
Who take after division .. 734
Proximity of relationship .. 735
What forms a line .. 736
How degrees counted in direct line .. 737
How degrees counted in collateral line .. 738
How descendants inherit .. 745
Rights of ascendants .. 746
When ascendants take articles in kind .. 747
Division between ascendants and collaterals .. 748
When there are no ascendants .. 749
Rights of brothers and sisters .. 750
When father or mother or both survive .. 751
How division made between brothers and sisters .. 752
Rights of surviving ascendants .. 753
Usufruct of the father or mother .. 754
When relatives do not inherit .. 755
Rights of natural children .. 756
Their rights limited .. 757
How their rights are regulated .. 758
Their rights when there are no descendants .. 759
When entitled to all the property .. 760
What their children entitled to .. 761
Adulterous or incestuous children .. 762
Nourishment of adulterous or incestuous children .. 763
When such children can make no claim .. 764
When natural child dies without issue .. 765
When natural child leaves no father or mother .. 766
Rights of surviving husband or wife .. 767
When property goes to the State .. 768
How surviving husband or wife obtain possession .. 770
Surviving husband or wife to give security .. 771
When damages due .. 772
When to be accepted under benefit of inventory .. 782
How renunciation made .. 784

ART.

Effect of renunciation 785
Share of heir who renounces 786
No representation after renunciation 787
Rights of creditors of heir who renounces 788
When right to renounce outlawed 789
Until when acceptance can still take place 790
No renunciation of succession of person living 791
When right to renounce forfeited 792

Vacant Successions.
When deemed to be vacant 811
Curator to be appointed to vacant 812
Duties of such curator 813, 814
How co-heirs contribute to payment of debts 870
How legatees contribute 871
When real estate encumbered by annuities 872
Responsibility of heirs for debts 873
When legatee subrogated 874
Remedy of co-heir who has paid more than his share 875
When an heir is insolvent 876
When execution can take place 877
When creditors can ask for separation of property 878
When separation cannot be asked for 879
When right to claim separation outlawed 880
Creditors of an heir cannot ask for separation of estates .. 881
When creditors can take part in division 882
How ownership vests 883
Responsibility of heirs towards each other 884
Extent of responsibility 885
Guarantee of debtors' solvency 886
When divisions can be rescinded 887
Action for rescission 888
When action does not lie 889
How damage appraised 890
How defendant can stop action 891
When heir can no longer apply for rescission 892

SUPERIOR FORCE.
When damages not due owing to 1148
Exceptions as to proof 1348
Destruction of leased property by 1730
Responsibility if fire has taken place by 1733
Rule as to repairs 1754
Tenant not responsible in case of 1755
Responsibility of carriers 1784
In case of loss of deposit 1934
Theft of deposit 1954

SUPPORT. (See MARRIAGE and SUCCESSIONS).
Of children by husband and wife 203
Children towards father and mother 205
Husband obliged to 214
In case of incarceration of child 378
Specific legacy for support how paid 610
As to adulterous and incestuous children 762
Expenses for, not subject to collation 852
Revocation of duration for refusal of 955
When compensation does not take place 1293
Liability of community for 1409
Right of widows 1465
Dotal real estate may be conveyed for 1558
Right of widow as to her dotal property 1570

SUPPRESSING STATUS.
When criminal action can be brought for 327

SURETY. (See SECURITY).
Obligations of 201

ART.

How person can become 2014
Engagements extend to heirs 2017
Requisites of 2018
Solvency of, how determined 2019
When new one is to be furnished 2020
How responsibility limited 2021
May have debtor's property seized 2022
Must indicate property to be seized 2023
Liability of creditor, if he fails to seize 2024
When there are several sureties 2025
Can ask to have creditors' action divided 2026
Effect of division by creditor 2027
Rights of surety after payment 2028
When subrogated 2029
Claim for repayment 2030
When both surety and debtor have paid 2031
Rights of surety against debtor 2032
Claim of, against other sureties 2033
Effect of merger 2035
What exceptions can be set up 2036
When released 2037
Acceptance of property by creditor 2038
Effect of extension 2039
Rights of judicial 2042
Person giving security for judicial 2043

SURGEONS. (See DOCTORS)

SURVIVOR. (See SUCCESSIONS).

SWINDLING.
In case of betting 1967

SYNALLAGMATIC. (See CONTRACTS).

SYSTEM. (See DOTAL SYSTEM).

T

TACIT RENEWAL. (See RENEWAL).

TALLIES.
Constitute proof 1333

TAPESTRIES.
Included in words furnishing movables 534

TEMPORARY GUARDIAN.
When appointed 142
Also for children of previous marriage 143

TENDER. (See CONSIGNATION).
When can be made 1257
What required for validity of 1258
Validity of consignation 1259
Expense of, by whom borne 1260
When can be withdrawn 1261
When cannot be withdrawn 1262
When writ of demand necessary 1264

THIRD PARTIES. (See CONTRACTS and OBLIGATIONS).
When person can stipulate for 1121
Contracts do not affect 1165
Defeasances do not affect 1321
Date of private instruments as to 1328

THIRD PARTY IN POSSESSION. (See MORTGAGES).

ART.

TILES.
Repairs to 1754

TIME. (See OBLIGATIONS DEPENDING UPON TIME).
When surety can proceed against debtor 2032

TITLE DEEDS. (See DEEDS, INSTRUMENTS and PUBLIC INSTRUMENTS).

TOLERATION.
Effect of acts of 2232

TORTS.
When minor not entitled to rescission 1310
What they are 1382
Responsibility for 1383
Extent of responsibility 1384
Responsibility of owner of animal 1385
Responsibility of owner of building 1386

TOWING PATH.
Owner must leave 556

TRAVELLERS.
Proof as to deposits made by 1348
Responsibility of hotel keepers for effects of 1952
Responsibility of same in case of theft 1953

TRANSCRIPTION.(See REGISTRARS).
Of donation 939
Upon whose demand to be made 940
Failure to make 941
Effect of omission 942
Of donations and wills with restitution 1069
Effect of, as proof 1336
Vendor retains preference by 2108
Expense of 2155
Of certain contracts 2181
Effect of 2182
Registrar cannot delay 2199

TREASURE-TROVE.
Usufructuary not entitled to 598
Ownership of 716

TREES. (See USUFRUCT).
When personal property 521
When held jointly 670
Distance to be kept 671
When neighbar can have them cut 672
When branches to be cut 673

TRENCHES. (See DITCHES).

TURF PITS.
Right of usufructuary to 598

U

UNCLES AND AUNTS. (See SUCCESSIONS).
Prohibition as to marriage 163
When can oppose marriage 174
Failure of, to denounce unworthy heir 728

UNDERWOOD. (See COPSE).

ART.

UNDIVIDED PROPERTY. (See DIVISION and PUBLIC SALE).
No one compelled to hold 815
Sale of 2205

UNWORTHINESS. (See SUCCESSIONS).
Persons unworthy of inheriting .. .. 727 et seq.

USE AND HABITATION.
How acquired and lost 625
Security to be furnished 626
Duties of person having right of 627
How regulated 628
When deed not explicit 629
Of fruits 630
Cannot be transferred 631
Habitation in a house 632
How habitation regulated 633
Right of habitation cannot be assigned 634
Obligations of person having 635
Of forests, how regulated 636

USE. (PUBLIC).
Indemnity due for taking property for 545
Servitudes for 649

USUFRUCT. (See DONATIONS and ENJOYMENT).
Of immovable things 526
Definition 578
How established 579
Can be absolute or conditional 580
To what it applies 581
Right of usufructuary 582
Natural fruits 583
Civil fruits 584
When fruits belong to usufructuary 585
How civil fruits acquired 586
Of things which are consumed by use 587
Of life annuity 588
Of things which are detiorated by use 589
Of underwood 590
Of trees 591
Right to cut down trees 592
Right to take poles for vines 593
When fruit trees belong to usufructuary 594
Usufructuary may assign his right 595
Enjoyment of increase from alluvion 596
Enjoyment of servitudes 597
Enjoyment of mines and quarries 598
Owner cannot interfere 599
When enjoyment begins 600
Usufructuary to give security 601
When security cannot be given 602
Sale of personal property for want of security 603
Delay in furnishing security 604
Property to be kept in repair 605
Structural repairs 606
No obligation to rebuild 607
Usufructuary liable for charges 608
Responsibility of owner for charges 609
Life annuity, by whom paid 610
Liability of usufructuary for debts 611
When usufructuary must contribute to debts 612
Expenses of suits, by whom paid 613
Encroachment by third party 614
If animal dies 615
If whole herd dies 616
Expiration of 617
Expiration by wrongful use 618

	Art.
Duration when not granted to persons	619
When duration conditional	620
Sale of thing forming part of	621
Rights of creditors of usufructuary	622
Destruction of part of the thing	623
Destruction of building	624
Resulting from donation or will	899
When comprised in settlement of dowry	1568
Usufruct of real estate can be mortgaged	2118
Compulsory ejectment	2204

USUFRUCTUARY. (See USUFRUCT).

V

VACANT PROPERTY
Ownership of 539

VALIDITY. (See CONTRACTS).
Of payment 1238
Of compromise 2056

VAULTS.
Repairs to 606

VENDOR. (See DELIVERY, SALES and WARRANTY).
Right of preference of 2013

VERIFICATION.
Of writing 1324

VINE DRESSERS. (See Workmen).

VINES.
Poles for 593
Unwritten lease of 1774

VINTAGE TUBS.
When real estate 524

VIOLENCE. (See ACTS OF VIOLENCE, CRUELTY and REVERENTIAL FEAR).
Effect of, upon divisions 887
When can no longer be set up 892
Vitiates consent 1109
Effect upon contracts 1111
When there is 1112
Effect when practised upon husband or wife, etc. 1113
As to cause of avoidance of contract 1115
Only gives right to action for rescission 1117
When action for rescission outlawed 1304
Effect upon compromises 2053
Effect as to prescription 2233

VIOLENT DEATH. (See DEATH).

VOYAGE. (SEA.)
How records of birth drawn up during 59
How records of death drawn up during 86

W

WAGES.
Preferred claim for 2101
Prescription as to 2272

ART.

WALLS. (See PARTY WALLS).
Repairs to 606

WAR.
Responsibility of lessee for losses 1773

WARRANTY. (See SALES and SUCCESSIONS).
Of shares between coparceners 822
Of dowry 1440
Due by vendor 1625
As to ejectment 1626
May be modified by agreement 1627
Vendor liable for his personal acts 1628
In case of ejectment price to be returned 1629
Rights of purchaser 1630
When property has decreased in value 1631
If purchaser has reaped benefit 1632
If property has increased in value 1633
Repayment of repairs 1634
If vendor has sold another's property 1635
If ejectment partial 1636
How purchaser compensated in such case 1637
In case of non-apparent servitudes 1638
General rule 1639
When ceases in case of ejectment 1640
Against hidden defects 1641
Liability as to apparent defects 1642
Stipulation as to hidden defects 1643
Special rights of purchaser 1644
When vendor owes damages 1645
When vendor did not know of defects 1646
Loss of thing having defects 1647
Action resulting from defects 1648
When such action cannot be brought 1649
In case of assignment of claim 1693
When assignor agrees to warrant 1695
In case of sale of an inheritance 1696
In case of lease 1721
In case lessee suffers disturbances 1725

WARREN RABBITS. (See RABBITS).

WATER. (See SERVITUDES).
Flow of cannot be stopped 640
Dripping of, from roof 681

WATER PIPES.
Continuous servitudes 688

WAYS. (See PUBLIC DOMAIN).
Ownership of 538

WELLS. (See CESSPOOLS).

WIDOW. (See COMMUNITY, DOTAL SYSTEM and SUCCESSIONS).

WIFE. (See HUSBAND and WIFE).

WILLS. (See DIVISIONS, DONATIONS, ENTAILS, PORTION OF PROPERTY WHICH CAN BE DISPOSED OF and RESTITUTION).
How persons can dispose of property gratuitously 893
Definition. 895
Conditions impossible or contrary to law 900
Who can make 901
Who can dispose of property or receive it 902
Capacity of minor 903, 904

	Art.
Married women can make	905
One must be conceived to take	906
Minor cannot leave his property to his guardian	907
Rights of natural children	908
When physicians, surgeons and others cannot take	909
Public Institutions must be authorized to take	910
When void because made through intermediaries	911
When testamentary dispositions lapse	925
Reduction of legacies	926
When legacy entitled to preference	927
How persons can thus dispose of property	967
Two persons cannot make will together	968
Form of will	969
Holographic	970
In public form	971
When received by two notaries	972
How then to be signed	973
When to be signed by witnesses	974
Who cannot act as witness	975
Mystic or secret	976
When testator cannot sign	977
Who cannot use mystic form	978
When testator cannot speak	979
Who can act as witness	980
Of soldiers or sailors	981
Made in hospitals etc	982
Duplicate to be made	983
When they become void	984
In case of a plague	985
To what persons such provision applies	986
When they likewise become void	987
During sea voyage	988
Of officers	989
Duplicates	990
Original to be forwarded	991
Formalities	992, 993
How long valid	994
In whose favor bequests can be made	995
Provisions to be read to testator	996
To be signed	997
When testator declares that he cannot sign	998
Of Frenchman abroad, when valid	999
Made in foreign country, how enforced	1000
When void	1001
Nature of testamentary dispositions	1002
Universal legacy	1003
Seizure of heirs	1004
Enjoyment by universal legatee	1005
Seizure of universal legatee	1006
Holographic wills, how presented	1007
When universal legatee must obtain possession	1008
Liability of universal legatee	1009
Legacy under universal title	1010
Legatees bound to demand delivery	1011
Liability of legatee	1012
When specific legatees paid pro rata	1013
Rights of legatee of specific legacy	1014
Interest or income, when due	1015
Costs of action for delivery	1016
Who responsible for payment of legacy	1017
Delivery of legacy	1018
When real estate increased	1019
If property encumbered	1020
When legacy void	1021
When legacy is of an undefined thing	1022
Effect of legacy to creditor or servant	1023
Liability of legatee under special title	1024

ART.

Revocation of wills.
- How revoked .. 1035
- Effect of subsequent .. 1036
- Effect of revocation .. 1037
- Conveyance of thing bequeathed .. 1038
- When legatee does not survive testator .. 1039
- Legacy depending upon uncertain event .. 1040
- When condition suspends fulfillment .. 1041
- Effect of destruction of thing bequeathed .. 1042
- Effect of refusal or incapacity of legatee .. 1043
- When legatees entitled to accretion .. 1044
- When legacy considered to be made jointly .. 1045
- Action for revocation .. 1046
- Time within which action to be brought .. 1047
- When property can be left subject to restitution .. 1048
- Property left to brothers and sisters, subject to restitution 1049 et seq.

WINDMILLS.
- When real estate .. 519
- When not real estate .. 531

WINDOWS. (See SERVITUDES).
- Right to make in party wall .. 675
- Constitute apparent servitude .. 689
- Repairs to .. 1754

WINE.
- Not included in word movable .. 533
- To be tasted before sale is complete .. 1587

WINE PRESSES.
- When real estate by destination .. 524

WITNESSES. (See INSTRUMENT OF NOTORIETY and WILLS).
- To records of civil status .. 37
- Proof by, when no registers exist .. 46
- Marriage to be celebrated in presence of .. 75
- To be mentioned in marriage record .. 76
- When will to be made in presence of .. 971
- When will to be read in presence of .. 972
- Will to be signed by .. 974
- Who cannot act as .. 975
- To mystic will .. 976
- When additional are to be called .. 977
- Who can be .. 980
- To wills of soldiers and sailors .. 981
- To wills made during sea voyage .. 988

WOOD. (See TREES and USUFRUCT)
- When part of community .. 1403

WOOL.
- Right of lessee to .. 1819
- Stipulation as to .. 1828

WORK. (See PLANTATIONS and WORKMANSHIP).

WORKMANSHIP. (See ACCESSION).
- Owner of material can claim thing made by paying for .. 570
- When it exceeds value of material .. 571

WORKMEN. (See JOB).
- Domicile of .. 109
- Injuries caused by .. 1384

	Art.
Hiring of	1780
Contract expires by death	1795
Right to sue	1798
Are subject to rules	1799
Entitled to preference	2103
How preference retained	2110
Prescription as to wages	2271
WRECK..	
Proof of deposit in case of	1348
Forced deposit	1949

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YOUNG OF ANIMALS. See ANIMALS and LEASES OF CATTLE

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